TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1919

No. [redacted]86-51

ANNIE HARRIS, FORMERLY ANNIE FRANCIS, ET AL.,
APPELLANTS,

vs.

HARRY H. BELL ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED AUGUST 26, 1919.

(26,697)

(26,697)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 611.

ANNIE HARRIS, FORMERLY ANNIE FRANCIS, ET AL., APPELLANTS,

vs.

HARRY H. BELL ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Page
Caption	*a*
Transcript of record from the district court of the United States for the eastern district of Oklahoma	1
Amended petition	2
Exhibit "A"—Homestead deed, Creek Nation to Freeland Francis, dated December 10, 1908	11
"B"—Allotment deed, Creek Nation to Freeland Francis, dated December 10, 1908	13
Petition of A. W. Shulthis to remove cause to U. S. court	14
Petition of Thos. W. Daniel to remove cause to U. S. court	17
Bond of A. W. Shulthis for removal of cause	21
Bond of Thos. W. Daniel for removal of cause	22
Certificate of clerk to transcript of cause from State court	23
Joint and several answer of Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey, and John R. Taylor to amended petition	25

Byron S. Adams & Detweiler (Inc.), Printers, Washington, D. C., September 12, 1918.

	Original.	Print
Exhibit—Agreement between H. L. Lightsey and John R. Taylor and R. C. Martin and H. W. Kirkpatrick and Thomas W. Daniel	37	
Exhibit—Deed from Annie Francis to Laura L. McGinnis, dated January 15, 1908	40	
Joint and several answer of A. W. Shulthis, E. J. Lambert, W. H. Whitford, and R. L. Ebling to amended petition	41	
Answer of Laura L. McGinnis to amended petition	51	
Answer of Harry H. Bell to amended petition	54	
Exhibit "A"—Deed from Annie Francis to Harry H. Bell, dated February 27, 1913	61	
"B"—Order of county court approving deed	63	
Joint and several answer of Eugene W. Gill, Frank F. Lamb, and A. C. Brady to amended petition	64	
Answer of Gertrude Womack to amended petition	74	
Reply to joint and several answer of Eugene W. Gill, Frank F. Lamb, and A. C. Brady and answer to their cross-petition	77	
Reply to joint and several answer of A. W. Shulthis, E. J. Lambert, W. H. Whitford, and R. L. Ebling and answer to their counter-claim	78	
Reply to joint and several answer of Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey, and John R. Taylor and answer to their counter-claim	79	
Reply to answer of Harry H. Bell and answer to counter-claim	80	
Reply to answer of Laura L. McGinnis	80	
Answer of Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey, and John R. Taylor to counter-claim of Harry H. Bell	81	
Answer of A. W. Shulthis, W. H. Whitford, E. J. Lambert, and R. L. Ebling to counter-claim of Harry H. Bell	84	
Reply to answer of Gertrude Womack	88	
Order appointing guardian *ad litem*	88	
Answer of Amos Francis and Elizabeth Francis by their guardian *ad litem* to amended petition	89	
Answer of A. W. Shulthis, E. J. Lambert, W. H. Whitford, and R. L. Ebling to cross-petition of Amos Francis and Elizabeth Francis, minors	102	
Answer and reply of Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey, and John R. Taylor to answer and cross-petition of Amos Francis and Elizabeth Francis, minors	107	
Reply of Eugene W. Gill, Frank F. Lamb, and A. C. Brady to answer of Amos Francis and Elizabeth Francis, minors	113	
Answer of The Hoppy-Toad Oil & Gas Company to amended petition	113	
Reply of Gertrude Womack to answer of Amos Francis and Elizabeth Francis, minors	114	
Reply of plaintiff to cross-petition of Amos Francis and Elizabeth Francis	115	
Order submitting cause	116	
Statement of evidence	116	
Agreed statement of facts	117	

	Original.	Print
Testimony of Annie Francis Harris		121
Rufus Tucker		132
Plaintiff rests		134
Testimony of Harry H. Bell		134
E. H. Moore		143
Theodore Stidham		147
Defendant Harry H. Bell rests		152
Testimony of W. W. Fox		152
Introduction of exhibits		153
Testimony of A. W. Shulthis		154
Exhibit A—Mimeograph copy of New Born Census Card No. 819, showing enrollment of Freeland Francis between pages 159A and		159B
D—Copy of letter of secretary transmitting deed of Annie Francis to Laura McGinnis to Indian Office		159A
E—Order of county court, Okmulgee county, confirming sale and authorizing deed by W. J. Cook to Lightsey and Taylor		159B
"—"—Guardian's deed, W. J. Cook to H. L. Lightsey and John Taylor, conveying the interest of Amos and Elizabeth Francis		159D
"—"—Mimeograph copy of Field Card No. 125, showing enrollment of Mack Francis between pages 159G and		159H
"—"—Record United States court for the western district, bond of administration and letters of administration issuing out of said court to Wm. J. Cook *in re* estate of Freeland Francis		159G
Bell's Exhibit 1—Deed of general warranty, February 27, 1913, Annie Francis to Harry H. Bell		159J
2—Order of county court for Okmulgee county approving deed of Annie Francis to Harry H. Bell		159K
3—Order of county court for Muskogee county approving deed of Annie Francis to Harry H. Bell		159M
Defendant Gill's Exhibit "A"—Warranty deed of October 5, 1912, from Howell H. Brown and Cora L. Brown to Harry F. Eagan		159N
"B"—Warranty deed, May 1, 1912, from J. Orlando Mitchell to Howell H. Brown		159P
"C"—Quitclaim deed of May 9, 1913, from Harry F. Eagan to Eugene W. Gill		159Q
Defendant Womack's Exhibit "A"—Warranty deed, April 9, 1910, from Mack Francis to Maud Mitchell		159S
Order that agreed statement of facts and testimony had before the court on the trial of the above-entitled cause be printed in full in the transcript on appeal, and settling and approving the agreed statement of facts and the testimony		160

	Original.	Print
Opinion of the court, Campbell, J.		160
Decree		165
Petition and application for appeal		170
Assignment of errors		170
Order allowing appeal		173
Request and motion for incorporation of oral testimony in transcript		174
Order of court directing that agreed statement of facts and all of the testimony be reproduced in the exact words of the witnesses		175
Citation and acknowledgments of service thereof		175
Præcipe for transcript and acknowledgments of service thereof		180
Certificate of clerk		187
Appearances		189
Order of submission		190
Opinion, Sanborn, J.		191
Decree		198
Petition for appeal		199
Assignment of errors		199
Order allowing appeal		202
Citation and service		203
Clerk's certificate		208

Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1918, of said Court, before the Honorable Walter H. Sanborn and the Honorable Walter I. Smith, Circuit Judges, and the Honorable Jacob Trieber, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the thirteenth day of March, A. D. 1917, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Annie Harris, formerly Annie Francis, et al., were Appellants, and Harry H. Bell, et al., were Appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

(*a*)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE RALPH E. CAMPBELL, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

ANNIE HARRIS, Formerly ANNIE FRANCIS, - - *Plaintiff,*

Equity ***vs.*** **No. 2015**

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. LAMB, A. B. MILLER, MAUDE MITCHELL, W. H. HARRIS, L. A. BELL, H. L. LIGHTSEY, JOHN R. TAYLOR, MACK FRANCIS, AMOS FRANCIS and ELIZABETH FRANCIS, Minors, WILLIAM J. COOK, Guardian of the Estates of Amos Francis and Elizabeth Francis; J. ORLANDO MITCHELL, HOWELL H. BROWN, THOMAS W. DANIEL, LAURA L. McGINNIS, R. C. MARTIN, H. M. KIRKPATRICK, JOHN V. McMAHON, A. W. SHULTHIS, E. J. LAMBERT, W. H. WHITFORD, R. L. EBLING, GERTRUDE WOMACK, HARRY F. EAGAN, EUGENE W. GILL and THE HOPPY-TOAD OIL & GAS COMPANY, a Corporation, - - - - - - *Defendants.*

ANNIE HARRIS, Formerly ANNIE FRANCIS; AMOS FRANCIS AND ELIZABETH FRANCIS, Minors, Appearing by W. C. FRANKLIN, Guardian *Ad Litem*, - - *Appellants,*

vs.

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. LAMB, A. B. MILLER, MAUDE MITCHELL, W. H. HARRIS, L. A. BELL, H. L. LIGHTSEY, JOHN R. TAYLOR, MACK FRANCIS, J. ORLANDO MITCHELL, HOWELL H. BROWN, THOMAS W. DANIEL, LAURA L. McGINNIS, R. C. MARTIN, H. M. KIRKPATRICK, J. S. KIRKPATRICK, JOHN V. McMAHON, A. W. SHULTHIS, E. J. LAMBERT, W. H. WHITFORD, R. L. EBLING, GERTRUDE WOMACK, HARRY F. EAGAN, EUGENE W. GILL and THE HOPPY-TOAD OIL & GAS COMPANY, a Corporation, - - - - - - *Appellees.*

BE IT REMEMBERED, That this case was begun in the District Court in and for Okmulgee County, State of Oklahoma, and came to this court on Petition, and Bond for Removal. On the 18th day of October, A. D. 1913, the same was entered on the dockets of this court and given No. 2015 Equity.

The Amended Petition, Petitions and Bonds for Removal incorporated in the transcript from the State Court are in words and figures as follows:

District Court, Okmulgee County, Oklahoma. Annie Harris, formerly Annie Francis, Plaintiff, v. *Harry H. Bell, J. A. Wood, H. R. Pierson, A. C. Brady, Frank F. Lamb, A. B. Miller, Maude Mitchell, W. H. Harris, L. A. Bell, H. L. Lightsey, John R. Taylor, Mack Francis, Amos Francis and Elizabeth Francis, minors, aged 15 and 11 years, respectively, William J. Cook as guardian of the estates of said Amos Francis and Elizabeth Francis, J. Orlando Mitchell, Howell H. Brown, Thomas W. Daniel, Laura L. McGinnis, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, A. W. Shulthis, E. J. Lambert, W. H. Whitford, R. L. Ebling, Gertrude Womack, Harry F. Eagan, Eugene W. Gill and The Hoppy-Toad Oil & Gas Company, a corporation, Defendants.—No. 2781.*

Amended Petition.

Comes now the said Annie Harris, and for her cause of action herein alleges and states:

(a) That she is a member of the Creek Tribe of Indians and is enrolled as a full-blood, opposite roll number 8304, upon the Dawes Commission records, and that she married William Francis, who was enrolled as a member of the Creek Tribe of Indians of the one-half blood, opposite roll number 460 of the said Commission, and who died on or about the 6th day of April, 1913.

(b) That there was born to the said plaintiff and the said William Francis, a son, Freeland Francis, a daughter Elizabeth Francis, and a son, Amos Francis; that the said Freeland Francis was enrolled upon the enrollment records of said Creek Tribe of Indians, opposite roll number 1070, as a newborn of three-fourths blood, and there was allotted to him for his portion of the lands of said tribe, the following described real estate, to-wit:

> The East Half of the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section 25, and the Southeast Quarter of the Southwest Quarter of Section 26, all in Township 16 North, Range 13 East, in Okmulgee County, State of Oklahoma,

and on the 10th day of December, 1908, homestead and allotment deeds were issued therefor and the same were duly filed for record on the 30th day of March, 1909, with the Register of Deeds of Okmulgee County, Oklahoma, copies of which are hereto attached, made a part hereof, and marked Exhibits "A" and "B", respectively.

(c) That on the 22nd day of June, 1905, the said Freeland Francis died, intestate, leaving as his sole and only heir at law, his mother, the said Annie Francis, the plaintiff herein, who became the owner of said lands so allotted to the said deceased, and who is now the owner thereof in fee simple, and that no administration was ever had of said estate, and all the debts of the decedent, if any, having been fully paid and discharged.

(d) That since the death of the said Freeland Francis, the following purported instruments of conveyance and purported instruments of and concerning said real estate, so allotted to him, appear of record in the office of the Register of Deeds of Okmulgee County, Oklahoma, none of which were ever approved by the court having jurisdiction of the settlement of the estate of said deceased allottee, and none of said deeds, which in the chain of title, originating from the said Annie Francis, were ever approved by any court having jurisdiction of the settlement of the estate of the said Freeland Francis, deceased, and each of said following purported instruments of and concerning said real estate are void and a cloud upon plaintiff's title to said real estate, to her great and irreparable damage and injury, to-wit.

1. A warranty deed from the said Annie Francis to the defendant, Laura McGinnis, executed on the 15th day of January, 1908, and filed for record on the 18th day of January, 1908, and recorded in Book D-6-A, at page 6 of said records.

2. A warranty deed from the said Annie Francis to the defendant, J. A. Wood, executed on the 17th day of October, 1908, and filed for record on the 22nd day of October, 1908, and recorded in Book D-17-A, at page 205 of said records.

3. A warranty deed from the said Annie Francis to the defendant, H. R. Pierson, executed on the 8th day of December, 1908, and filed for record on the same day, and recorded in Book D-17-A, at page 303 of said records.

4. A warranty deed from the said Laura L. McGinnis and her husband, to the defendants, H. L. Lightsey and John R. Taylor, executed on the 8th day of January, 1909, and filed for record on the 21st day of the same month, and recorded in Book D-17-A, at page 392 of said records.

5. A warranty deed from the defendant, Mack Francis, to the defendants, A. C. Brady and Frank F. Lamb, executed on the 9th day of November, 1909, and filed for record on the same day, and recorded in Book D 27-A, at page 260 of said records.

6. A warranty deed from the said Mack Francis to the defendant, A. B. Miller, executed on the 9th day of March, 1910, and filed for record on the next day and recorded in Book D-28-A, at page 521 of said records.

7. A warranty deed from the said Mack Francis to the defendant, Maude Mitchell, executed on the 10th day of March, 1910, and filed for record on the next day, and recorded in Book D-28-A, at page 525 of said records.

8. A warranty deed from the said Mack Francis to the defendants, W. H. Harris, and L. A. Bell, executed on the 13th day of April, 1910, and filed for record on the 15th of said month, and recorded in Book D-28-A, at page 599 of said records.

9. A warranty deed from the said Mack Francis to the defendants, H. L. Lightsey and John R. Taylor, ex-

ecuted on the 5th day of January, 1912, and filed for record on the same day, and recorded in Book D-39-A, at page 481 of said records.

10. A warranty deed from the defendant, J. Orlando Mitchell, to the defendant, Howell H. Brown, executed on the 1st day of May, 1912, and filed for record on the third day of the same month, and recorded in Book D-39-A, at page 588 of said records.

11. A certain agreement by and between the defendants, H. L. Lightsey and John R. Taylor, of the one part, and the defendants, R. C. Martin and H. M. Kirkpatrick, of the other part, executed on the 12th day of March, 1913, and recorded in Book M-83, at page 467 of said records.

12. A certain quit claim deed from the defendant, J. R. Taylor, to the defendant, John V. McMahon, executed on the 7th day of April, 1913, and filed for record on the 31st day of May, 1913, and recorded in Book M-77, at page 333 of said records.

13. A certain oil and gas mining lease made by the defendant lessors, H. L. Lightsey, J. R. Taylor, R. C. Martin, H. M. Kirkpatrick, and Thomas W. Daniel, to the defendant lessee, A. W. Shulthis, on the 5th day of April, 1913, and filed for record on the 23rd day of the same month, and recorded in Book M-84, at page 146 of said records.

14. A certain agreement for the assignment of a certain interest in said oil and gas mining lease, by the said A. W. Shulthis to the defendants, E. J. Lambert, W. H. Whitford and R. L. Ebling, executed on the 12th day of April, 1913, and filed for record on the 15th day of the same month, and recorded in Book M-87, at page 41 of said records.

15. A certain agreement of and concerning said real estate, made by and between the defendant, J. R. Taylor, and the defendant, John V. McMahon, on the 7th day of April, 1913, and filed for record on the next day, and recorded in Book M-83, at page 572 of said records.

16. A certain warranty deed from the defendant, Howell H. Brown and his wife, to the defendant, Harry F. Eagan, executed on the 5th day of October, 1912, and

filed for record on the 1st day of May, 1913, and recorded in Book D-76, at page 263 of said records.

17. A certain quit claim deed from the said Harry F. Eagan to the defendant, Eugene W. Gill, executed on the 9th day of May, 1913, and filed for record on the 15th day of May, 1913, and recorded in Book M-77, at page 307 of said records.

(e) That on or about the 10th day of October, 1911, W. J. Cook, as curator or guardian of the estates of the said Amos Francis and Elizabeth Francis, minors, and who was at that time and is now, the duly appointed, qualified and acting curator or guardian of the estates of said minors, filed his duly verified petition in the County Court of Okmulgee County, Oklahoma, alleging, among other necessary allegations, for the sale of the real estate of said minors, that said minors were the owners of a two-thirds' interest in and to the said allotment of the said Freeland Francis, deceased, their brother, and asking for an order of said court authorizing said curator or guardian, to sell the said interest of his said wards in and to the said allotment of the said Freeland Francis, deceased; that afterwards, such proceedings were had in said action to sell said real estate; that on the 8th day of November, 1911, an order of sale was made by the said court and entered upon the journals of the said court in said proceedings, authorizing and directing the said curator or guardian to sell the alleged interest of his said wards in and to said real estate, and after giving the notice, as required by law, said curator or guardian, on the 2nd day of December, 1911, sold said real estate, at public auction, to the defendants, H. L. Lightsey and John R. Taylor, which sale was duly returned to the court, and the court on the 15th day of January, 1912, approved and confirmed said sale, and ordered and directed the said curator or guardian to execute and deliver a deed for said real estate to said alleged purchasers, and in pursuance of said order and direction of the court, the said curator or guardian, executed, acknowledged and delivered a deed to said purchasers, for said alleged interest in said real estate; that the said Amos Francis and Elizabeth Francis never had any title or interest in said real estate, so sold and so conveyed, either by way of inheritance, or otherwise and that the said guardian or curator, at the time of the filing of said petition and alleging therein that his said wards had such interest in said real estate,

had constructive notice from the public records of the Dawes Commission at Muskogee, Oklahoma, that the said plaintiff herein was the mother of the said Freeland Francis, and that the father, William Francis, was dead, having died on or about the 6th day of April, 1905, and that he had constructive notice from the same records that the said Freeland Francis died, intestate, on the 22nd day of June, 1905, and that the mother inherited the fee simple estate in his said real estate; that by reason of the fact that the said wards of said curator had no title or interest in the lands of decedent, either by inheritance or otherwise, the County Court, nor said curator or guardian, had any control or power or jurisdiction over said real estate, or to order or decree a sale of the same, or to confirm a sale thereof, or to make and deliver a deed thereof to an alleged purchaser; that said confirmation of said alleged sale was on the 15th day of January, 1912, duly filed with the Register of Deeds of Okmulgee County, Oklahoma, for record, and was recorded in Book M-63, at page 606 of said records; that said alleged order of sale, sale, confirmation of sale and said curator or guardian's deed to said alleged purchaser and the said record of the confirmation of said sale are all void, of no effect and operate as a cloud upon the title of plaintiff to said real estate so belonging to her, to her great and irreparable damage and injury.

(f) That on or about the 27th day of February, 1913, the said guardian of said wards aforesaid, filed his petition in said County Court, alleging that the said Amos Francis and Elizabeth Francis, as an inheritance from the said Freeland Francis, deceased, had an interest in said allotment of the said Freeland Francis, deceased, and he asked that he be authorized to lease said real estate for oil and gas mining purposes, and that upon said day such proceedings were had under said petition or application, that orders were made and entered upon the journal of said court, confirming a sale of an oil and gas mining lease to The Hoppy-Toad Oil & Gas Company, and authorizing and directing the said petitioner to make and execute an oil and gas mining lease to the said, The Hoppy-Toad Oil & Gas Company, a corporation, and on said 27th day of May, 1913, the said guardian or curator of said minors, executed, acknowledged and delivered to the said The Hoppy-Toad Oil & Gas Company, an oil and gas mining lease on said real estate, and said lease was duly filed for record and recorded with the Register of Deeds of Okmulgee

County, and was duly recorded in Book M-59, at page 369 of said records; that on the date last aforesaid, the order confirming said sale of said oil and gas mining lease so made by the County Court aforesaid, was filed for record with the said Register of Deeds, and the same was by him, duly recorded in Book M-83, at page 369 of said records; that, as above herein, in the preceding paragraph alleged, neither the said Amos Francis nor the said Elizabeth Francis had any title or interest in said lands of which said guardian and the alleged purchaser of said oil and gas mining lease had constructive notice, as above herein alleged and set forth, and the said court was without jurisdiction to order and direct a sale thereof, and said guardian was without the power or authority to make, execute and deliver an oil and gas mining lease thereon, and the said confirmation of said sale of said oil and gas mining lease, the order directing the curator or guardian to make a deed to the said The Hoppy-Toad Oil & Gas Company, on said real estate, and the execution and delivery of said oil and gas mining lease to said company, the record of the confirmation of the sale thereof, and the record of the oil and gas lease so recorded, all are void and of no effect, and are clouds upon the plaintiff's title to said real estate, to her *h*reat and irreparable damage and injury.

(g) That the said Annie Harris, formerly Annie Francis, has only an imperfect understanding of the English language, and can only read and write the same imperfectly; that she has had but little schooling and has had no business experience whatever, and is entirely unacquainted with the value of land and the procedure connected with the conveyance of land and the title thereto; that on the 27th day of February, 1913, the defendant, Harry H. Bell, procured and caused plaintiff to execute and deliver to him a deed for said real estate by her former name, Annie *Harris*, which deed, was duly filed with the Register of Deeds of Okmulgee County, Oklahoma, for record and was recorded in Deed Book D-85, at page 90 of said records, and again recorded in Book D-85, page 139 of said records; that said deed was procured by false and fraudulent representations to the plaintiff to the effect that said conveyance as a lease on said land for a term of five years, and said defendant, Bell, secured the approval of the County Court of Okmulgee County, Oklahoma, to said conveyance by fraud and misrepresentation, practiced upon said court, and upon plaintiff in this, to-wit: That, whereas this

plaintiff had never seen said land and knew little or nothing of its value or location, and the said defendant, Bell, procured testimony before the County Court that said land was rough, broken and hilly, and of but little value, and that the sum of $225.00 for which said land was conveyed by said conveyance was a good, fair and full consideration therefor; whereas, in fact, said land is now and was at the time and prior thereto worth the sum of several thousand dollars, and plaintiff has only recently and since the execution of said deed last aforesaid, learned of the value of said land, and has learned that the instrument she signed and delivered to the said defendant, Bell, was not a lease, but a warranty deed for said real estate, and that relying upon the false and fraudulent representation of said defendant, Bell, as true, that she was executing a lease and not a deed, and that said real estate was of little value as aforesaid, she signed said deed, and that she would not have signed the same, had she not been deceived and defrauded by the defendant, Bell, as aforesaid; that she is now the legal wife of one Willie Harris, to whom she has been duly married according to law; that her legal name was at the time of the execution of said deed and is now, Annie Harris, and that she would not have signed said deed in the name of Annie Francis, but at the special instance and request of the defendant, Bell, for her to do so; that at the time of the execution of said deed, last aforesaid, she believed the said Bell truthfully stated the facts in reference thereto, and believing the same to be a lease for said land only, she received the sum of $225.00 therefor, and has received no other sum therefor, or thing of value, and that plaintiff is informed and believes, and so alleges the facts to be that a conveyance of said land, by warranty deed, was worth at least $4,000.00, and that she relied on said statements and representations of the defendant, Bell, that the same was a lease only, and that she delivered the same to said Bell as and for a lease and for no other purpose whatever; that after the execution and delivery of the aforesaid conveyance to the said defendant, Bell, and on the same day, the said Harry H. Bell, for the said Annie Francis, filed his certain petition in the County Court of Okmulgee County, Oklahoma, in which she alleged in substance, that decedent, Freeland Francis, was a three-quarter blood Creek Indian, who died intestate in the year 1905, leaving plaintiff and Amos Francis and Elizabeth Francis and Mack Francis, his sole heirs at law, seized of the land so allotted to him; that she made her deed

to the said Bell for said land for the said $225.00; that said land was wild, uncultivated and valuable for grazing only, and that said sum was fair and adequate.

This plaintiff avers that the said petition so filed in said County Court did not allege facts sufficient to give said court jurisdiction to approve and confirm said deed as hereinafter set forth; that on said date the court heard the testimony in said cause, and ordered that the same be approved; that said court was not the court having jurisdiction to settle the estate of said decedent, and said order approving said deed is void; that on the same date the said alleged and pretended order of the County Court, approving said conveyance to the said defendant, Bell, was filed with the Register of Deeds of Okmulgee County, Oklahoma, for record and was duly recorded in Book M-84, at page 92 of said records; that on the 28th day of February, 1913, the said Harry H. Bell filed for plaintiff, her petition in the County Court of Muskogee County, asking for the approval of said conveyance; that on the said day the court last aforesaid made and entered on the journal of said court an order approving said conveyance to the said Bell; that the said order of the court last aforesaid, was filed with the Register of Deeds of Okmulgee County, Oklahoma, for record and was duly recorded in Book M-83, at page 356 of said records; that said County Court of Muskogee County, Oklahoma, was not the court having jurisdiction to settle the estate of said Freeland Francis, deceased; and the said order of said County Court, last aforesaid, was void, and the confirmation and approval of said deed, and the record thereof, are void and of no effect and are clouds upon plaintiff's title to the said real estate, to her great and irreparable damage and injury.

Wherefore, plaintiff prays that each and every instrument so alleged and set forth in the premise, and the proceedings in said courts as alleged, and the records thereof, affecting title to said real esetate, except said homestead and allotment deeds aforesaid, be canceled, set aside and held for naught; that the said defendants, and each of them, be required to come into this action and set forth whatever claim, if any he has, on the real estate so allotted to the said Freeland Francis, or be forever barred from asserting the same; that said defendants, and each of them, be, on final hearing hereof, forever enjoined from asserting any claim or title to said real estate, and that

plaintiff may have such other and further relief in the premises to which she may be entitled.

J. R. LEAGUE and MERWINE & NEWHOUSE,
Attorneys for Plaintiff.

"Lien Claim J. R. League and Merwine & Newhouse, attorneys for plaintiff.

State of Oklahoma, Okmulgee County—ss.

Annie Harris, being first duly sworn, says that she is the plaintiff in the above action; that she has read the foregoing amended petition, and knows the contents thereof, and that the facts stated and allegations therein contained are true.

.....

Sworn to and subscribed in my presence this .... day of ....., 1913. ....., Notary Public. My commission expires .....

EXHIBIT "A".

Homestead Deed No. .....

New-Born Indian Roll No. 1070.

THE MUSKOGEE (CREEK) NATION, INDIAN TERRITORY.

To All to Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats. 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be; and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead, for which he shall have a separate deed; and

Whereas, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of

Freeland Francis,

a citizen of said tribe as a homestead;

Now, Therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said

Freeland Francis,

all right, title and interest of the Muskogee (Creek) Nation and all other citizens of said Nation in and to the following described land, viz.:

The South East Quarter of the South West Quarter of Section Twenty-six (26) Township Sixteen (16) North, Range Thirteen (13) East,

of the Indian Base and Meridian, in Indian Territory, containing forty (40) acres, more or less, as the case may be, according to the United States survey thereof; subject, however, to the conditions provided by said Act of Congress and which conditions are that said land shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also, to the provisions of said Act of Congress relating to the use, devise and descent of said land after the death of the said

Freeland Francis,

and subject, also, to all provisions of said Act of Congress, relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In Witness Whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 10th day of December, A. D. 1908.

(Seal) Motey Tiger,
Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior,
Approved Mar. 25, 1908.
Richard A. Ballinger, Secretary.
By Oliver A. Phelps, Clerk.

Filed for record on the 30th day of March, 1909, at 3 o'clock P. M. and recorded in Book ....., page 254.

.....
Commissioner to the Five Civilized Tribes.
By ....., Clerk.

EXHIBIT "B".

Allotment Deed, No. .....

New-Born Indian Roll No. 1070.

THE MUSKOGEE (CREEK) NATION, OKLAHOMA,
Formerly Indian Territory.

To All to Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats. 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, shall be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes, so as to give to each an equal share of the whole in value, as nearly as may be; and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead, for which he shall have a separate deed; and

Whereas, The said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of

Freeland Francis

a citizen of said tribe, as an allotment, exclusive of a forty-acre homestead;

Now, Therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said

Freeland Francis

all right, title and interest of the Muskogee (Creek) Nation, and all other citizens of said nation in and to the following described land, viz:

> The Northeast quarter of the Southeast quarter and the South Half of the Southeast quarter of Section Twenty-five (25), Township Sixteen (16) North, Range Thirteen (13) East,

of the Indian Base and Meridian in Oklahoma, containing One Hundred and Twenty (120) acres, more or less, as the case may

be, according to the United States survey thereof; subject, however, to all provisions of said Act of Congress relating to appraisement and valuation, and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In Witness Whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affxed this 10th day of December, A. D., 1908.

(Seal) MOTEY TIGER,

Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior,
Approved Mar. 25, 1909,
Richard A. Ballinger, Secretary.
By Oliver A. Phelps, Clerk.

Filed for record on the 30 day of Mar. 1909, at 3 o'clock P. M., and recorded in Book 33, at page 254.

.....,

Commissioner to the Five Civilized Tribes.

By ..... Clerk.

.....

Endorsed: Filed August 30th, 1913.

ED. NERN,

Clerk of District Court.

Petition of A. W. Shulthis to Remove This Cause Into the District Court of the United States for the Eastern District of Oklahoma.

The petition of A. W. Shulthis, one of the defendants in the above entitled action, respectfully shows to this Honorable Court:

First: That on the 8th day of April, 1913, the plaintiff above named filed her original petition in the District Court in and for Okmulgee County, State of Oklahoma; that in said petition and in said suit, this petitioner was not named as a party defendant; that thereafter and in said cause in said court, the said plaintiff, on August 30th, 1913, filed her amended petition in which she alleges that she is the owner in fee simple of the lands in said petition described, to-wit:

The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East, in Okmulgee County, State of Oklahoma.

That the said lands constituted the allotment, in the Creek Nation, of Freeland Francis, a duly enrolled three-quarter blood Creek Indian, who died on or about the 22nd day of June, 1905; that she, the said plaintiff, acquired title to said lands as sole heir at law of the said Freeland Francis, deceased.

Petitioner further represents that the said suit of the plaintiff is a suit to quiet her title in and to said lands, and to have canceled certain written instruments, being deeds and leases on said land.

And said petitioner alleges that all of said purported instruments of and concerning said real estate are void, and clouds upon the said plaintiff's title to said real estate, to her great and irreparable damage and injury. And, as one of said instruments, the plaintiff in her petition sets forth a certain oil and gas mining lease covering said lands executed to this petitioner on April 5th, 1913, by the defendants H. L. Lightsey, J. R. Taylor. R. C. Martin, H. M. Kirkpatrick and Thomas W. Daniel, which said instrument was filed for record in the office of the Register of Deeds of Okmulgee County, Oklahoma, on the 23rd day of April, 1913, and recorded in Book M-84, at page 146, of said records; that in said petition the said plaintiff prays that each and every instrument so alleged and set forth in said amended petition, and the records thereof, affecting title to said real estate adversely to her, be set aside and held for naught, and that the said defendants, and each of them, be required to come into said action and set forth whatever claim, if any he has, on the real estate in said amended petition described, and that said defendants be forever barred from asserting the same, and that said defendants, and each of them, on final hearing, be enjoined from asserting any claim or title to said real estate, and that the plaintiff have such other and further relief in the premises as to which she may be entitled.

Second: This petitioner further states that said action is of a civil nature in equity, over which the District Court of

the United States has original jurisdiction; that the plaintiff, Annie Harris, formerly Annie Francis, is the sole plaintiff therein, and that the said plaintiff is a citizen and resident of and within the Eastern District of the State of Oklahoma, and that the lands hereinabove described are situated within the Eastern District of the State of Oklahoma; that this petitioner was, at the time of the commencement of said action, and has been ever since said time, a citizen and resident of and within the State of Kansas; that the controversy in said action between the said plaintiff and this petitioner, as above set forth, is separate and distinct from any other or further controversy, and that a complete determination of said controversy can be had without the presence of any of the defendants in this action, other than this petitioner, and that all of said other defendants are neither indispensable or necessary parties to the complete determination of said controversy between said plaintiff and this petitioner; that the matter in dispute between the plaintiff and this petitioner, in this action, exceeds the sum of three thousand ($3,000.00) dollars exclusive of interest and costs.

Third: That this petitioner is in the actual and exclusive possession of that part of the above mentioned land described as follows, to-wit:

The Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), Township Sixteen (16) North, Range Thirteen (13) East,

and was so in possession of said land at the time of the commencement of this action; that this petitioner is operating said land for oil and gas, and is producing oil and gas therefrom.

Fourth: This petitioner further avers that the time has not elapsed wherein he is allowed, under the practice and laws of the State of Oklahoma, and the rules of this court, to plead, demur, or answer said amended petition of the plaintiff.

That no special bail was or is required in said action.

Fifth: Your petitioner files and offers herein, a bond with good and sufficient securities conditioned as required by law, that he will, within thirty (30) days from the date of filing of this petition, file in said District Court of the United States for the Eastern District of Oklahoma, the transcript and copy of the record in this suit, and for payment of all

costs which may be awarded by the said District Court of the United States, if said court should hold that this suit was wrongfully or improperly removed thereto.

And your petitioner prays that this court proceed no further herein, and that it accept the said sureties and bond, and cause the record herein to be removed into the District Court of the United States for the Eastern District of Oklahoma, and for all of which he will ever pray.

A. W. SHULTHIS.

State of Kansas, County of Montgomery.

Personally appeared before me the undersigned, a notary public in and for said county and state, A. W. Shulthis, the petitioner named in the foregoing petition, and made oath that he had read over the above and foregoing petition, and knows the contents thereof, and that the allegations therein contained are true of his own knowledge.

Dated this 12th day of September, 1913.

A. W. SHULTHIS.

Subscribed and sworn to before me this the 12th day of September, 1913.

(Seal) Ernest Sewell,
My Com. Exp. April 5th, 1915. Notary Public.

Endorsements: No. 2781. Annie Harris, formerly Annie Francis, plaintiff, vs. Harry H. Bell et al., defendants. Petition of A. W. Shulthis for removal of cause. State of Oklahoma, County of Okmulgee. Received and filed Sept. 20, 1913. Ed. Nern, Clerk of Dist. Court.

Petition of Thomas W. Daniel to Remove This Cause Into the District Court of the United States for the Eastern District of Oklahoma.

The petition of Thomas W. Daniel, one of the defendants in the above entitled action, respectfully shows to this Honorable Court:

First: That on the 8th, day of April, 1913, the plaintiff above named, filed her original petition herein, in the District Court in and for Okmulgee County, State of Oklahoma; that in said petition and in said suit this petitioner was not named as a party defendant; that thereafterwards, and in said cause

in said court said plaintiff on August 30th, 1913, filed her amended petition in which she alleges that she is the owner in fee simple of the lands in said petition described, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East, Okmulgee County, Oklahoma;

That the said lands constituted the allotment in the Creek Nation of Freeland Francis, a duly enrolled three-quarter blood Creek Indian, who died on or about the 22nd, day of June, 1905; that patents to said land were issued on the 10th, day of December, 1908, and that she, the said plaintiff, acquired title to said lands as sole heir at law, under said patents, of the said Freeland Francis, deceased.

Petitioner further represents that the said suit of the plaintiff is a suit to quiet her title in and to said lands, and to have canceled certain instruments in writing, as set forth in the petition, affecting the title to said lands, and that said plaintiff alleges that all of said instruments of writing of and concerning said real estate are void, and clouds upon the said plaintiff's title to said real estate, to her great and irreparable damage and injury; and as one of said instruments, the plaintiff in her petition sets forth that certain oil and gas mining lease covering said lands, executed on April 5th, 1913, by the defendants, H. L. Lightsey, J. R. Taylor, R. C. Martin, H. M. Kirkpatrick and this petitioner; that in said petition the plaintiff prays that the said instrument, and the record thereof, be set aside and held for naught, and that this petitioner be required to come into said action and set forth whatever claim, if any, he has on the said lands in said amended, and that petitioner be forever barred from asserting the same, and that on final hearing, he be enjoined from asserting any claim or title to said real estate, and that the plaintiff have such other and further relief in the premises as to which she may be entitled.

Second: This petitioner further states that this action is of a civil nature in equity, over which the District Court of the United States has original jurisdiction. That the plaintiff is the sole plaintiff herein, and that the said plaintiff is a citizen and resident of and within the Eastern District of the State of Oklahoma, and that the lands hereinabove described are sit-

nated within the Eastern District of the State of Oklahoma; that this petitioner was at the time of the commencement of said action, and has been ever since said time, a citizen and resident of and within the State of Virginia; that the controversy in said action between the said plaintiff and this petitioner, as above set forth, is separate and distinct from any other or further controversy, and that a complete determination of the said controversy between the plaintiff and this petitioner, can be had without the presence of any of the defendants in this action other than this petitioner, and that all of said other defendants are neither indispensable or necessary parties to the complete determination of said controversy between said plaintiff and this petitioner; that the matter in dispute between the plaintiff and this petitioner, in this action, exceeds the sum of Three Thousand ($3000.00) Dollars, exclusive of interest and costs.

Third: Petitioner further avers that this is a suit of a civil nature in equity, over which the District Court of the United States has original jurisdiction, arising under the Constitution and under the laws of the United States, as appears from the face of plaintiff's said amended petition, and petitioner avers and states that the plaintiff's said action shows that the suit arises under the laws of the United States, and involves, as appears from the face of the said amended petition, the construction and application of the following laws of the United States, to-wit:

Section 6 of an Act of Congress of June 30, 1902, entitled, "An Act to ratify and confirm a suppllemental agreement with the Creek Tribe of Indians, and for other purposes" (32 Stat. L. 500).

Section 1 and Section 9 of an Act of Congress of May 27, 1908, entitled, "An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes" (35 Stat. L. 312).

Section 22 of an Act of Congress approved April 26, 1906, entitled, "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes, in the Indian Territory, and for other purposes" (34 Stat. L. 137).

That the petition shows on its face that it involves a determination by the court, of whom, as heirs of the said Freeland Francis, deceased, take the title to the land involved herein, under the patents issued as aforesaid on December 10th, 1908, to the heirs of Freeland Francis, deceased.

Fourth: This petitioner further avers that the time has not elapsed wherein he is allowed, under the practice and laws of the State of Oklahoma, and the rules of this court, to plead, demur or answer said amended petition of the plaintiff. That no special bail was or is required in said action.

Fifth: Petitioner files and offers herein, a bond with good and sufficient securities conditioned as required by law, that he will, within thirty (30) days from the date of the filing of this petition, file in said District Court of the United States for the Eastern District of Oklahoma, the transcript and copy of the record in this suit, and for payment of all costs which may be awarded by the said District Court of the United States, if said court should hold that this suit was wrongfully or improperly removed thereto.

And your petitioner prays that this court proceed no further herein, and that it accept the said sureties and bond, and cause the record herein to be removed into the District Court of the United States for the Eastern District of Oklahoma, and for all of which he will ever pray.

THOMAS W. DANIEL.

State of Virginia, County of Charlotte.

Personally appeared before me, the undersigned, a notary public in and for said county and state, Thomas W. Daniel, the petitioner named in the foregoing petition, and made oath that he had read over the above and foregoing petition, and knows the contents thereof, and that the allegations therein contained are true of his own knowledge.

Dated this the eighth day of October, 1913.

THOMAS W. DANIEL.

Subscribed and sworn to before me this the 8th day of October, 1913.

D. W. Berger,
Notary Public.

(Notarial seal)
My Com. Exp. 3/11/1915.

Endorsements: No. 2781. Annie Harris, formerly Annie Francis, plaintiff, vs. Harry H. Bell, et al., defendants. Petition of Thomas W. Daniel for removal of cause. Received and filed Oct. 17, 1913. Ed. Nern, Clerk of Dist. Court.

Bond for Removal of Cause.

Know All Men by These Presents:

That I, A. W. Shulthis, of Independence, Kansas, as principal, and Equitable Surety Company, of St. Louis, Missouri, as sureties, are held and firmly bound unto Annie Harris, formerly Annie Francis, plaintiff in the above entitled cause, her heirs, executors, administrators and assigns, in the sum of Five Hundred ($500.00) Dollars, lawful money of the United States of America, for the payment of which well and truly to be made, we, and each of us bind ourselves, our successors, executors and administrators jointly and firmly by these presents.

The condition of this obligation is such that,

Whereas, the above named Annie Harris, formerly Annie Francis, had heretofore brought a suit of a civil nature in the District Court in and for Okmulgee County, State of Oklahoma,

And, whereas, said A. W. Shulthis simultaneously with the filing of this bond, will file his petition in the said District Court in and for Okmulgee County, Oklahoma, for the removal of this suit into the District Court of the United States for the Eastern District of Oklahoma, according to the provisions of an Act of Congress in such case made and provided.

Now, therefore, if the said A. W. Shulthis shall enter into said District Court of the United States for the Eastern District of Oklahoma on or before the next regular session of said court, and within thirty (30) days from the filing of said petition for removal, a certified copy of the record in said suit, and shall well and truly pay all costs to be paid, or costs that may be awarded by said District Court of the United States if the said court should hold that said suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in said suit, if special bail is originally requisite therein, then this obligation shall be void, otherwise, to remain in full force and effect.

Executed and subscribed to this 12th day of September, 1913.

A. W. SHULTHIS, *Principal.*

EQUITABLE SURETY COMPANY,

(Corp. seal) By E. J. PHELPS, Attorney in fact,

Sureties.

The foregoing bond approved this 20th day of September, 1913.

(Seal) ED NERN, *Clerk.*

Endorsements: No. 2781; Annie Harris, formerly Annie Francis, Plaintiff, vs. Harry H. Bell et al., Defendants; Bond on Removal of Cause. State of Oklahoma, County of Muskogee; Received and filed, Sep. 20, 1913, Ed Nern, Clerk of Dist. Court.

Bond for Removal of Cause.

Know All Men by These Presents:

That I, Thomas W. Daniel, of Drake's Branch, Virginia, as principal, and Equitable Surety Company, of St. Louis, Missouri, as sureties, are held and firmly bound unto Annie Harris, formerly Annie Francis, plaintiff in the above entitled cause, her heirs, executors, administrators and assigns, in the sum of Five Hundred ($500.00) Dollars, lawful money of the United States of America, for the payment of which well and truly to be made, we, and each of us bind ourselves, our successors, executors and administrators jointly and firmly by these presents.

The condition of this obligation is such that,

Whereas, the above named Annie Harris, formerly Annie Francis, had heretofore brought a suit of a civil nature in the District Court in and for Okmulgee County, State of Oklahoma,

And, whereas, said Thomas W. Daniel simultaneously with the filing of this bond, will file his petition in the said District Court in and for Okmulgee County, Oklahoma, for the removal of this suit into the District Court of the United States for the Eastern District of Oklahoma, according to the provisions of an Act of Congress in such case made and provided.

Now, therefore, if the said Thomas W. Daniel shall enter into said District Court of the United States for the Eastern District of Oklahoma on or before the next regular session of said court, and within thirty (30) days from the filing of said petition for removal, a certified copy of the record in said suit, and shall well and truly pay all costs to be paid, [illegible] costs that may be awarded by said District Court of the United States if the said court should hold that said suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in said suit, if special bail is originally requisite

therein, then this obligation shall be void, otherwise, to remain in full force and effect.

Executed and subscribed to this 8th day of October, 1913.

THOMAS W. DANIEL, *Pincipal.*

EQUITABLE SURETY COMPANY,
(Seal) By E. J. PHELPS, Attorney in Fact,
Sureties.

The foregoing bond approved this 17th day of October, 1913. (Seal) ED NERN, *Clerk.*

Endorsements: No. 2781; Annie Harris, formerly Annie Francis, Plaintiff, vs. Harry H. Bell, et al., Defendants; Bond of Thomas W. Daniel on Removal of Cause. Received and filed Oct. 17, 1913, Ed Nern, Clerk of Dist. Court.

Clerk's Certificate.

State of Oklahoma, County of Okmulgee—ss.

I, Ed Nern, Clerk of the District Court of Okmulgee County, State of Oklahoma, hereby certify the above and foregoing to be a full, true, and correct copy of the record and the whole thereof, in the above entitled suit, heretofore pending in said court, being suit numbered 2781, wherein Annie Harris formerly Annie Francis is plaintiff, and Harry H. Bell et al. are defendants, said record consisting of the petition filed in said suit on the 8th day of April, 1913, the summons issued and return thereon filed in said suit April 18th, 1913; the Separate Answer of Frank F. Lamb and A. C. Brady filed by said defendants, April 24th, 1913; Separate Answer and Cross Petition of Harry H. Bell filed on the 30th day of April, 1913; Reply of Plaintiff to Answer and Cross Petition of Defendant Harry H. Bell filed on the 10th day of May, 1913; Motion to Make Gertrude Womack party defendant and Order granting Motion filed on the 5th day of June, 1913; Summons issued to said Gertrude Womack on the 5th day of June, 1913; Summons to H. L. Lightsey et al. McCurtain County and John V. McMahon Tulsa County on the 30th day of August, 1913; Order permitting the filing of an Amended Petition granted August 30th, 1913; Praecipe for summons for A. W. Shulthis filed June 2nd, 1913; Summons issued to Muskogee County and returned filed Sept. 6th, 1913; Summons issued to E. W. Gill and return thereon filed on the 20th day of September, 1913; Summons issued to Okmulgee County to Amos Francis *et al.* and return

thereon filed September 12, 1913; Summons issued to Tulsa County to E. J. Lambert *et al.* and return thereon filed September 13, 1913; Summons issued Okmulgee County to Hoppy-Toad Oil & Gas Company *et al.* and return thereon filed September 18th, 1913; Summons issued to Wagoner County for Mack Francis et al. and return thereon filed September 6th, 1913; Summons issued to Bryan County for Laura L. McGinnis and return thereon filed September 18th, 1913; Summons issued to Montgomery County Kansas for A. W. Shulthis and return thereon filed September 6th, 1913; Summons issued to Charlotte County, Virginia for Thomas W. Daniel and return thereon filed September 18th, 1913; the alias Summons issued to Bryan County, for Laura L. McGinnis and return thereon filed September 25th, 1913; the petition of A. W. Shulthis for removal of cause filed September 20th, 1913; the Notice of filing said petition for removal filed September 20th, 1913, the Bond for removal of said suit to the United States District Court, filed September 20th, 1913; the Notice of filing Petition of Thomas W. Daniel for Removal filed October 17, 1913; the Petition of Thomas W. Daniel for Removal of cause filed October 17, 1913; and Bond of Thomas W. Daniel for removal of this cause to the United States Court for the Eastern District of Oklahoma filed October 17, 1913; all as appear on file and of record in my office.

In testimony whereof, I have hereunto set my hand and seal of said court this 17 day of October, 1913.

(Seal)

ED NERN,
Clerk of District Court of Okmulgee County, Oklahoma.

Endorsed: Filed Oct. 18, 1913, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 10th day of December, A. D. 1913, the defendants Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor filed their answer herein, which is in words and figures as follows:

In the District Court of the United States for the Eastern District of the State of Oklahoma. Annie Harris, formerly Annie Francis, Plaintiff, v. *Harry H. Bell, et al., Defendants.—No. 2015 Equity.*

Joint and Several Answer of Defendants, Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor.

Come now the defendants, Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor, and for their joint and several answer to the amended petition of the plaintiff herein allege and state:

They admit that the plaintiff is a member of the Creek Tribe of Indians, and that she is enrolled as a full blood opposite Roll Number 8304 upon the Dawes Commission records, and admit that she married William Francis, who was enrolled as a member of the Creek Tribe of Indians of the one-half blood opposite Roll Number 460 of the said Commission, and admit that the said William Francis died on or about the 6th day of April, 1905, and admit that there was born to the said plaintiff and said William Francis, a son, Freeland Francis, a daughter, Elizabeth Francis, and a son, Amos Francis, and admit that the said Freeland Francis was enrolled upon the enrollment records of the said Creek Tribe of Indians opposite Roll Number 1070 as a New Born Creek Indian of three-fourths Indian blood; and admit that there was allotted by the said Commission, as his portion of the land of said tribe, the following real estate, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East, in Okmulgee County, State of Oklahoma.

And these defendants admit that on the 10th day of December, 1908, homestead and allotment deeds or patents were issued covering said lands, and that the same were duly filed for record on the 30th day of March, 1909, and admit that Exhibits A and B to said amended petition are correct copies of said deeds or patents.

These defendants admit that the said Freeland Francis died intestate on the 22nd day of June, 1905, but deny that the said Freeland Francis left surviving him, as his sole and only heir at law, his mother, the said Annie Francis, the plaintiff herein, and deny that the plaintiff herein became the owner of

said lands on the death of said Freeland Francis, and deny that the plaintiff is now the owner thereof in fee simple. These defendants admit that no administration was ever had of said estate, and that all the debts of the decedent, if any, have been fully paid and discharged, and allege and state that the said Freeland Francis died within the limits of the Creek Nation, and within the limits of what is now Okmulgee County, Oklahoma.

Further answering these defendants allege and state that the said William Francis, the father of said Freeland Francis, died prior to the death of the said Freeland Francis; that the said Freeland Francis left surviving him, his mother, the said Annie Francis, the plaintiff herein, and his brother, Amos Francis, who, at all times herein mentioned, was a minor and under the age of twenty-one (21) years, and is a duly enrolled Creek Indian citizen of the full blood; that the said Freeland Francis also left surviving him, his sister, Elizabeth Francis, who, at all times herein mentioned, was, and now is, a minor, and a duly enrolled citizen of the Creek Nation of the full Indian blood; that the said William Francis was the father of said Amos Francis and Elizabeth Francis; that the said Annie Francis, Amos Francis and Elizabeth Francis, were the sole heirs at law of the said Freeland Francis, and on the issuance of said deeds or patents, as aforesaid, the said Annie Francis became the owner in fee of an undivided one-half interest in said land, the said Elizabeth Francis became the owner of an undivided one-fourth interest in said land, and the said Amos Francis became the owner of an undivided one-fourth interest in said land. These defendants admit that on the 15th day of January, 1908, the said Annie Francis executed and delivered to Laura McGinnis a warranty deed wherein and whereby she did convey to the said Laura McGinnis the above described lands, and admit that said deed was filed for record on the 18th day of January, 1908, and is recorded in D Book 6-A at page 6 of the records now in the office of the Register of Deeds of Okmulgee County, Oklahoma. And defendants further allege and state that the said deed, on or about the 6th day of July, 1910, was duly approved by the Secretary of the Interior; that under and by virtue of the execution and delivery of said deed, and the approval thereof by the Secretary of the Interior, the said Laura McGinnis became the owner of an undivided one-half interest in and to said lands, and became the owner of all right, title and interest of the said plaintiff in and to said lands

acquired by her, as an heir of the said Freeland Francis, deceased.

Defendants admit that on or about the 8th day of January, 1909, the said Laura McGinnis, as Laura L. McGinnis, executed and delivered to the defendants, H. L. Lightsey and John R. Taylor, her certain warranty deed, wherein and whereby she did grant, bargain, sell and convey unto the said defendants, H. L. Lightsey and John R. Taylor, the above described lands, and admit that said deed was filed for record on the 21st day of January, 1909, and that it is recorded in Book D 17-A at page 392 of the records in the office of the Register of Deeds of Okmulgee County, State of Oklahoma, and defendants allege and state that under and by virtue of said deed, the said defendants, H. L. Lightsey and John R. Taylor, became the owners in fee of an undivided one-half interest in and to said lands.

Defendants admit that W. J. Cook is now, and was on the 10th day of October, 1911, the duly appointed, qualified and acting curator or guardian of the estates of the said minors, Amos Francis and Elizabeth Francis, and admit that on the 10th day of October, 1911, the said guardian filed his duly verified petition in the County Court of Okmulgee County, Oklahoma, alleging, among other necessary allegations for the sale of the real estate of the said minors, that the said minors were the owners of an undivided two-thirds interest in and to the above described lands, and asking for an order of said court authorizing said curator or guardian to sell the interests of his said wards in and to the said lands, and admit that afterwards such proceedings were had in said action to sell said real estate, and that on the 8th day of November, 1911, an order of sale was made by the said court, and entered upon the journals of said court in said proceedings, authorizing and directing the said curator or guardian to sell the interests of his said wards in and to said real estate; and admit that after giving the notice, as required by law, said curator or guardian, on or about the 2nd day of December, 1911, sold said real estate at public auction to the defendants, H. L. Lightsey and John R. Taylor, and admit that said sale was duly returned to the court, and that the court on the 15th day of January, 1912, approved and confirmed said sale, and ordered and directed the said curator or guardian to execute and deliver to the said purchasers a deed to said real estate; and admit that in pursuance of said order and direction of the said court the said guardian or curator executed, acknowledged and delivered to

the said purchasers a guardian's deed conveying to the said purchasers the interest of said minors in and to said lands. Defendants allege and state that the said guardian's deed was so executed and delivered on or about the 22nd day of January, 1912. Defendants further allege and state that thereafter, and on the 3rd day of March, 1912, the said deed was duly filed in the office of the United States Indian Superintendent at Union Agency, Muskogee, Oklahoma, with a petition praying for the approval thereof by the Secretary of the Interior; that no final action on said petition has been had by the Secretary of the Interior, but that said deed is still in the possession of the Interior Department pending the approval thereof by the said Secretary of the Interior. Defendants deny that the said County Court or the said guardian, were without control, power or jurisdiction over said real estate, and deny that the said County Court was without jurisdiction to order or decree a sale of said minors' interests in said real estate, and confirm the sale thereof, and deny that the said guardian was without power to make and deliver the deed hereinbefore mentioned. Defendants admit that the said order confirming said sale was on or about the 15th day of January, 1912, duly filed for record with the Register of Deeds of Okmulgee County, Oklahoma, and that the same was recorded in Book M 63 at page 606 of the records in said office. Defendants deny that the said order of sale, the said sale, the said confirmation of sale, and the said curator or guardian's deed, and the record of said confirmation, are void, and deny that the same operate as a cloud upon the title of the plaintiff in and to said real estate, and defendants allege and state that under and by virtue of said deed executed by the said guardian or curator the said defendants, H. L. Lightsey and John R. Taylor, became the owners of an undivided one-half interest in fee in and to all the above described real estate.

These defendants admit that on or about the 5th day of January, 1912, one Mack Francis executed to the defendants, H. L. Lightsey and John R. Taylor, a warranty deed covering the above described lands, which said deed was filed for record on the same day, and recorded in Book D 39-A at page 481 of the records in the office of the Register of Deeds of Okmulgee County, State of Oklahoma, and these defendants admit that said deed was void, and that no interest passed thereby; and defendants admit the execution of the agreement mentioned in said petition executed on the 12th day of March, 1913, by H. L. Lightsey and John R. Taylor to the defendants R. C.

Martin and H. M. Kirkpatrick, which said agreement was, on the 12th day of March, 1913, filed for record and is recorded in Book M-83 at page 467 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma; these defendants further allege and state that the defendant, Thomas W. Daniel, was a party to, and executed, said agreement; that a true and correct copy of said agreement is attached hereto, made a part hereof, and marked "Exhibit A." That under and by virtue of said agreement said defendants, R. C. Martin, H. M. Kirkpatrick and Thomas W. Daniel, became the owners of an interest in the above described premises, all as in said agreement set forth.

These defendants admit that on or about the 5th day of April, 1913, these defendants executed to the defendant herein, A. W. Shulthis, a certain oil and gas mining lease covering the above described land, and admit that said lease was filed for record on the 23rd day of April, 1913, and was recorded in Book M-84 at page 146 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma; and defendants allege and state that under and by virtue of said oil and gas mining lease the said lands were granted, demised, leased and let unto the said A. W. Shulthis, his heirs, successors and assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, of building tanks, powers, stations, buildings and structures thereon, to produce, refine and otherwise prepare and take care of said production. And defendants allege and state that under and by virtue of said oil and gas mining lease the said defendant, A. W. Shulthis, his successors and assigns, acquired the sole and exclusive right to operate and develop said lands for oil and gas, reserving only one-eighth of all oil produced from said lands to these defendants as the royalty reserved to the lessors in said lease.

Defendants admit that on or about the 7th day of April, 1913, the defendant, John R. Taylor, executed and delivered to the defendant, John V. McMahon, a certain agreement concerning the above described real estate, and which said agreement was filed for record and is recorded in Book M-83 at page 572 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma. And defendants admit that on or about the 7th day of April, 1913, the said defendant, John R. Taylor, executed to the said defendant, John V. McMahon, his certain quit claim deed to the above described premises, which said deed was on or about the 31st day of May, 1913, duly

delivered to the said John V. McMahon under the terms of the agreement last above mentioned; and admit that the said deed was filed for record on or about the said 31st day of May, 1913, and is recorded in Book M-77 at page 333 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma. And defendants allege and state that under and by virtue of the execution and delivery of said deed the said John V. McMahon became the owner in fee of all the right, title and interest in and to said lands theretofore owned and held by the said defendant, John R. Taylor.

Defendants deny that the said deeds, or leases, or any of them, hereinbefore mentioned, are void, save and except the deed hereinbefore mentioned executed on the 5th day of January, 1912, by Mack Francis to the defendants, H. L. Lighsey and John R. Taylor, and deny that said deeds, or leases, or either or any of them, are clouds upon the plaintiff's title to said real estate. And defendants allege and state that under and by virtue of said deeds hereinbefore mentioned they are the owners in fee of all of the above described lands, subject only to the said oil and gas lease executed as aforesaid by these defendants to the defendant, A. W. Shulthis.

Wherefore, these defendants having answered the allegations of the amended petition of the plaintiff, so far as material to them, pray that the plaintiff take nothing by her said amended petition herein, and that the same be dismissed as to these defendants; that these defendants have their costs herein incurred, and have such other and general relief to which they may be entitled.

Paragraph Two.

Further answering the amended petition herein, and for their counter-claim and cross demand against the plaintiff, Annie Harris, *nee* Francis, and against the co-defendants herein, Harry H. Bell, A. C. Brady, and Frank F. Lamb, Eugene W. Gill, William H. Harris and L. A. Bell, The Hoppy-Toad Oil and Gas Company, J. A. Wood, H. R. Pierson and A. B. Miller, allege and state that these answering defendants are the owners in fee simple absolute of the lands herein involved, and described in the amended petition herein, situated in Okmulgee County, State of Oklahoma, to-wit:

The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast

Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East.

That these defendants derive, and have acquired, title to said real estate as follows: the plaintiff herein is a duly enrolled full blood Indian citizen of the Creek Nation; that prior to April 30th, 1903, the said plaintiff was legally married to one William Francis; that the said William Francis was a duly enrolled Indian citizen of the Creek Nation; that on or about April 30th, 1903, there was born to the said plaintiff and the said William Francis, a son, Freeland Francis; that the said William Francis died on or about the 6th day of April, 1905; that the said Freeland Francis died intestate and unmarried on or about the 22nd day of June, 1905, within the limits of the Creek Nation, and within the limits of what is now Okmulgee County, State of Oklahoma; that the said Freeland Francis left surviving him, his mother, the plaintiff, a brother, Amos Francis, and a sister, Elizabeth Francis; that the said Amos Francis and Elizabeth Francis were, and are now, minors, and not of full legal age; that the said plaintiff and the said Elizabeth Francis and the said Amos Francis, were the sole heirs at law of the said Freeland Francis; that the said Freeland Francis was enrolled upon the enrollment records of the said Creek Tribe of Indians opposite Roll Number 1070, as a New Born Creek Indian of three-fourths Indian blood; that the said Amos Francis and Elizabeth Francis are both duly enrolled Indian citizens of the Creek Nation of the full Indian blood; that there was allotted, in the name of the said Freeland Francis, as his proportionate share of the lands of the Creek Nation, the above described lands. That on the 10th day of December, 1908, deeds or patents were issued by the United States of America and the Creek Nation, whereby the above described lands were duly conveyed to the heirs of the said Freeland Francis, deceased; that said patents were thereafter duly recorded in the office of the Commissioner to the Five Civilized Tribes, and true and correct copies of said deeds or patents are attached to the amended petition of the plaintiff herein as Exhibits A and B.

That on the 15th day of January, 1908, the said plaintiff was the owner in fee of an undivided one-half interest in and to the above described lands, and on said 15th day of January, 1908, the said plaintiff executed and delivered to Laura L. McGinnis, a certain warranty deed wherein and whereby she

did convey to the said Laura L. McGinnis an undivided one-half interest in and to said lands; that said deed was filed for record on the 18th day of January, 1908, and is recorded in Book D 6 A at page 6 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, the said deed was filed in the office of the United States Indian Agency at Union Agency, Muskogee, Oklahoma, with a petition that the same be approved by the Secretary of the Interior, and that thereafter, and on July 6th, 1910, the said deed was duly approved by the First Assistant Secretary of the Interior. A true and correct copy of said deed, together with endorsement of approval thereon by the First Assistant Secretary of the Interior, is attached hereto, made a part hereof, and marked "Exhibit B."

That thereafter, and on the 8th day of January, 1909, the said Laura L. McGinnis did execute and deliver to the defendants herein, H. L. Lightsey and John R. Taylor, her warranty deed, whereby, for a valuable consideration, she did convey to said defendants, her undivided one-half interest in said above described lands; that said deed was filed for record on the [illegible] day of January, 1909, and was duly recorded in Book D-17 [illegible] at page 392 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, and on or about the 10th day of October, 1911, one W. J. Cook was the duly appointed, qualified and acting guardian of the estates of said minors, Amos Francis and Elizabeth Francis; that the said W. J. Cook had theretofore been duly appointed such guardian by proper order of the County Court in and for Okmulgee County, State of Oklahoma; that on or about said date, the said guardian filed his petition in the County Court of Okmulgee County, asking for an order of said court authorizing him, as guardian, to sell the interests of his said wards in and to the above described lands; that thereafter, and on November 8th, 1911, a decree of sale was entered in said court directing the said guardian to sell the interests of said minors, in and to said land; that thereafter and on December 2nd, 1911, pursuant to law, and pursuant to said decree of sale, the said guardian sold the interest of said minors in said real estate at public auction to the defendants herein, H. L. Lightsey and John R. Taylor; that thereafter, and after due return of said sale made by the said guardian, and on January 15th, 1912, an order was entered in said court approving the said sale so made as aforesaid by

said guardian, and directing the said guardian to execute and deliver to said defendants, H. L. Lightsey and John R. Taylor, proper conveyances of all interests of the said minors in and to said real estate; that a true and correct copy of said order is attached hereto, made a part hereof, and marked "Exhibit C." That in pursuance of said order and direction of the court, the said guardian, on or about the 22nd day of January, 1912, executed and delivered to the said defendants, H. L. Lightsey and John Taylor, his guardian's deed, wherein and whereby he did, as guardian, convey to the said H. L. Lightsey and John Taylor, all the right, title and interest of said minors in and to the above described lands; that the said John Taylor named as grantee in said deed, and the defendant herein, John R. Taylor, are one and the same person. That a true and correct copy of said deed is attached hereto, made a part hereof, and marked "Exhibit D."

That thereafter, and on or about the 12th day of March, 1913, the said defendants, H. L. Lightsey and John R. Taylor, executed and delivered to the defendants herein, R. C. Martin, H. M. Kirkpatrick and Thomas W. Daniel, their certain agreement, conveying an interest in said above described lands; that said agreement was filed for record on the 12th day of March, 1913, and is recorded in Book M-83 at page 467 in the office of the Register of Deeds of Okmulgee County, Oklahoma; that a true and correct copy of said agreement is attached hereto, made a part hereof, and marked "Exhibit A."

That thereafter, and on or about the 7th day of April, 1913, the defendant, John R. Taylor, executed and delivered to the defendant, John V. McMahon, his certain quit claim deed wherein and whereby he did convey to the said defendant, John V. McMahon, all his right, title and interest in and to said above described lands; that said deed was filed for record on or about the 31st day of May, 1913, and is recorded in Book M-77 at page 333 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That under and by virtue of the foregoing conveyances, these answering defendants are the owners in fee of the above described lands.

These defendants further state that on or about October 17th, 1908, the plaintiff herein executed and delivered to the defendant, J. A. Wood, a certain deed wherein she did purport to transfer and convey unto said defendant the above described lands; that said deed was thereafter filed for record, and is

recorded in Book D-17-A at page 205 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, and on or about December 8th, 1908, the plaintiff executed and delivered to the defendant, H. R. Pierson, a certain deed wherein she did purport to transfer and convey unto said defendant, the above described lands; that said deed was thereafter recorded in Book D-17-A at page 303 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, and on November 9th, 1909, one Mack Francis executed and delivered to the defendants, A. C. Brady and Frank F. Lamb, a certain deed wherein and whereby he did purport to convey to said defendants the above described lands; that said deed was thereafter recorded in Book D-27-A at page 260 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, and on March 9th, 1910, the said Mack Francis did execute and deliver to the defendant, A. B. Miller, a certain deed wherein he did purport to convey all of his right, title and interest in and to the above described lands; that said deed was thereafter recorded in Book D-28-A at page 521 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter and on March 19th, 1910, the said Mack Francis did execute and deliver to Maude Mitchell of Muskogee, Oklahoma, a certain deed wherein and whereby *she* did purport to convey to the said Maude Mitchell the above described land; that thereafter the said deed was recorded in Book D-28-A at page 525 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, and on April 9th, 1910, the said Mack Francis did execute and deliver to the said Maude Mitchell, his said deed wherein and whereby he did purport to convey to the said Maude Mitchell an undivided one-half interest in the above described lands; that said deed was filed for record and is recorded in Book D-28 A at page 595 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, and on April 13, 1910, the said Mack Francis did execute and deliver to the defendants, William H. Harris and L. A. Bell, a certain deed wherein and whereby he did purport to convey to the said defendants all of his interest in the above described lands; that said deed was thereafter

recorded in Book D-28-A at page 599 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, and prior to May 1st, 1912, the said Maude Mitchell departed this life intestate, leaving surviving her, her husband, J. Orlando Mitchell; that on said May 1st, 1912, the said J. Orlando Mitchell executed and delivered to Howell H. Brown, a certain deed wherein he did purport to convey to said Howell H. Brown, an undivided one-half interest in the above described lands; that thereafter said deed was filed for record and recorded in Book D-39-A at page 588 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, and on October 5th, 1912, the said Howell H. Brown and Cora L. Brown, his wife, did execute and deliver to Harry F. Eagan, their certain deed wherein and whereby they did purport to convey to the said Harry F. Eagan, an undivided one-half interest in the above described land; that thereafter said deed was recorded in Book D-76 at page 263 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter, and on May 9th, 1913, the said Harry F. Eagan did execute and deliver to the defendant, Eugene W. Gill, a certain quit claim deed wherein and whereby he did purport to convey to the said defendant all of his right, title and interest in and to the above described lands; that thereafter the said deed was recorded in Book M-77 at page 307 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That on or about the 27th day of February, 1913, the plaintiff herein, as Annie Francis, did execute and deliver to the defendant, Harry H. Bell, her certain warranty deed wherein and whereby she did purport to convey to the said defendant, Harry H. Bell, the above described lands; that said deed was thereafter recorded in Book D-85 at page 90 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma; that said deed was thereafter re-filed for record, and was re-recorded in Book D-85 at page 139 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That on said February 27th, 1913, the said William J. Cook, as guardian of the said Amos Francis and Elizabeth Francis, minors, executed and delivered to the defendant, Hoppy-Toad Oil and Gas Company, of Muskogee, Oklahoma, a certain oil and gas lease wherein and whereby he did purport to

grant and convey unto said defendant the above described lands for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, of building tanks, stations and structures thereon, to take care of said products; that a copy of said lease was filed for record, and was recorded in Book M-59 at page *3692* of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That these defendants are in possession of that part of the above mentioned lands described as follows:

The Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), Township Sixteen (16) North, Range Thirteen (13) East.

That the said defendants hereinabove mentioned, under and by virtue of the said deeds and leases executed to them, and each of them, as aforesaid, claim some interest in the above described lands adverse to these answering defendants, and that the plaintiff herein claims some interest in said lands, all as set out in her amended petition herein; that the said defendants and the said plaintiff are without any right whatsoever, and have no right, estate, title or interest, in or to the said lands, or any part thereof; that the said deeds and leases hereinabove mentioned are void for the reason that the grantors and lessors therein had no right, title or interest in or to said lands at the time of the execution and delivery thereof; that the said deeds and leases, and the record thereof, constitute clouds upon the title of these answering defendants in and to their title as herein set forth, in and to the above described lands.

In consideration whereof, and to the end, therefore, that the defendants herein may, if they can, show why these answering defendants should not have the relief herein prayed, and may make a full disclosure and discovery of all the matters aforesaid, and to the best of their knowledge, information and belief, full true and perfect answers make to the matters and things stated in the counter claim of these answering defendants, these defendants pray:

First: That said defendants and the plaintiff be required to set forth their right, title and interest, if any they have, in and to the above described lands;

Second: That this Honorable Court, by proper decree herein, adjudge these answering defendants to be the owners

in fee of the above described lands, and that said defendants hereinabove named, and the plaintiff, have no right, valid claim, or any title therein, or any interest whatsoever in said premises;

Third: That the title and interest of these answering defendants in said lands be quieted, and that the said plaintiff and the said defendants, grantees and lessees in the above mentioned conveyances, be perpetually barred and enjoined from setting up or asserting any title or interest in said premises adverse to the title or interest of these answering defendants;

Fourth: That the deeds and leases hereinabove mentiond, executed and recorded as hereinabove set out, be declared void, and all be delivered up to be canceled, as clouds upon the title of these answering defendants;

Fifth: That these defendants have such other and further relief in the premises to which, in equity and good conscience, they may be entitled.

H. M. KIRKPATRICK and
R. C. MARTIN,
By R. C. MARTIN,

Attorneys for defendants, Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor.

AGREEMENT.

This agreement made and entered into this 12th day of March, 1913, by and between H. L. Lightsey and John R. Taylor, hereinafter known as parties of the first part, and R. C. Martin and H. W. Kirkpatrick, attorneys at law, hereinafter known as parties of the second part, and Thomas W. Daniel, hereinafter known as party of the third part,

Witnesseth:

That whereas the parties of the first part heretofore on the 26th day of April, 1911, entered into a written contract with the party of the third part, said contract being filed of record in the office of the Register of Deeds in Okmulgee County, Oklahoma, and by the terms and conditions of which said parties of the first part agreed to convey to said party of the third part an undivided interest in and to certain lands

located in said Okmulgee County and hereinafter described in consideration of said party of the third part, clearing and perfecting the title of said parties of the first part in and to said lands. Said lands being described as follows:

NE4 of SE4 and S2 of SE4 Sec. 25, also SE4 of SW4 Sec. 26, Twp. 16 North, Rg. 13 East.

That whereas, the title to said lands is still clouded and complicated and the parties of the first part and the party of the third part, desire to employ additional counsel to aid and assist said party of the third part in perfecting the title to said lands, it is mutually agreed by and between all the parties hereto, that said contract entered into between the parties of the first part and the party of the third part and recorded in Okmulgee County, and as heretofore set out, shall be, and hereby, is in all things released and shall be of no force and effect and that the party of the third part hereby relinquishes and quit-claims any and all rights or interest he may have in said lands by virtue of said contract, and that this agreement shall in all respects be a lien thereof.

Therefore, in consideration of the hereinafter covenants and conditions to be performed by the parties of the second part and third part, the parties of the first part hereby agree to give and convey to the parties of the second part, 33 1/3 per cent and to the party of the third part 16 2/3 per cent, and said parties of the first part do hereby assign and set over absolutely unto the said parties of the second and third part said 33 1/3 and 16 2/3 per cent, respectively, of any interest said parties of the first part may have in said lands situated in Okmulgee County, and as is hereinbefore more particularly described, or any interest or estate said parties may hereafter acquire in said lands, or any portion thereof, and said parties of the second part and third part are hereby given a lien on said lands or any portion thereof, for the payment of said attorney's fees and in any monies or property as rental or lease money, or as a bonus therefore, arising from said lands.

In consideration of said compensation and the covenants and agreements to be performed by the parties of the first part, as herein set out, the parties of the second and third part hereby accept said employment and agree to exert their best efforts and to exercise reasonable diligence, in the matter of perfecting and protecting all the rights, title or interest that parties of the first part may have in said lands, or may hereafter ac-

quire, and that the parties of the second and third part agree to send a representative to Washington in said matter within thirty days from the date hereof.

It is mutually understood and agreed by the parties hereto that the party of the third part will not be compelled or required to devote any of his time or expense in the prosecution of any such litigation as may be necessary in perfecting or protecting the title to said lands, other than party of the third part shall advise and counsel and will make any or all trips to Washington relative to said matter, as the parties hereto may deem expedient or necessary.

It is further mutually understood between the parties hereto that the parties of the second part shall take such steps and institute whatever litigation they may deem necessary to fully protect the parties of the first part in and to said lands or anything pertaining thereto.

It is further mutually agreed, that said parties of the first part shall do no act or acts, nor take any step or steps that will prejudice the efforts of said parties of the second and third part in perfecting the title to said lands.

This contract executed and delivered in quadruplicate, this 12th day of March, 1913.

In witness whereof, the parties hereto have set their hands on the day and year last above written.

H. L. LIGHTSEY,
J. R. TAYLOR,
H. M. KIRKPATRICK,
R. C. MARTIN,
THOS. W. DANIEL.

State of Oklahoma, McCurtain County—ss.

Before me, R. R. Massey, a notary public in and for said county and state, personally appeared H. L. Lightsey, John Taylor, R. C. Martin and Thomas W. Daniel and H. M. Kirkpatrick, to me known to be the persons who executed the above and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my official seal on this 12th day of March, 1913.

(Seal) R. R. Massey,
My commission expires June 4th, 1916. Notary Public.

DEED—GENERAL WARRANTY.

This indenture made this 15th day of Jan., A. D. 1908, between Annie Francis, a single woman, of Wagoner County, in the State of Oklahoma, of the first part, and Laura L. McGinnis, Muskogee, Okla., of the second parties,

Witnesseth:

The said parties of the first in consideration of the sum of Five Hundred and ($500.00) 00/100 Dollars, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and convey unto the said party of the second part, her heirs, and assigns, all of the following described real estate, situated in the County of Okmulgee and State of Oklahoma, to-wit:

All of the Northeast Quarter of the Southeast Quarter and the South Half of the Southeast Quarter of Sec. 25, Town. 16, Range 13, containing 120 acres, and the Southeast Quarter of the Southwest Quarter of Sec. 26, Town. 16, Range 13, containing 40 acres, being the allotment of Freeland Francis my deceased son.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

And said Annie Francis, his minor heirs, executors or administrators, do hereby covenant, promise and agree to and with said party of the second part that at the delivery of these presents, I lawfully seized in my own right of the absolute and indefeasible estate or inheritance in fee simple of, in and to all and singular the above granted and described premises, with the appurtenances. That the same are free, clear, discharged and unencumbered of and from all former grants, titles, charges, judgments, taxes, assessments, and encumbrances, of what nature and kind soever. That I will warrant and forever defend the same unto said party of the second party, heirs and assigns, against said party of the first part, her, their heirs and all and every person whomsoever, lawfully claiming or to claim the same.

In witness whereof the said party of the first part has hereunto set her hand on the day and year first above written.

ANNIE FRANCIS.

Witnesses to signature: W. B. RHEA.

State of Oklahoma, Muskogee County—ss.

Before me, W. B. Newby, a notary public in and for the said county and state on this 15th day of Jan., 1908, personally appeared Annie Francis and ..... to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

(Seal) W. B. Newby,
My commission expires 12-19-08. Notary Public.

Endorsed as follows:

Department of the Interior,
Washington, D. C., July 6, 1910.

The conveyance by Annie Francis of her interest as full blood Indian heir in and to the within described lands allotted to Freeland Francis New Born Creek Citizen, roll No. 1070 (who died prior to May 27, 1908) is hereby approved in accordance with the provisions of an Act of Congress approved April 26, 1906 (34 St. L. 137).

FRANK PIERCE,
First Assistant Secretary of the Interior.

Deed—General Warranty.

Annie Francis to Laura L. McGinnis, Muskogee, Okla.

State of Oklahoma, County of Okmulgee—ss.

This instrument was filed for record on this 18 day of Jan. A. D. 1908, at 8:00 o'clock A. M. and duly recorded in book D 6 A of ..... on page 6.

(Seal) J. L. Peacock, Register of Deeds.

Endorsed: Filed Dec. 10, 1913, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 10th day of December, A. D. 1913, the defendants A. W. Shulthis, W. H. Whitford, E. J. Lambert and R. L. Ebling filed their answer herein, which is in words and figures as follows:

Joint and Several Answer of Defendants, A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling.

Come now the defendants, A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling, and for their joint and

several answer to the amended petition of the plaintiff herein allege and state:

They admit that the plaintiff is a member of the Creek Tribe of Indians, and that she is enrolled as a full blood opposite Roll Number 8304 upon the Dawes Commission records, and admit that she married William Francis, who was enrolled as a member of the Creek Tribe of Indians of the one-half blood opposite Roll Number 460 of the said Commission, and admit that the said William Francis died on or about the 6th day of April, 1905, and admit that there was born to the said plaintiff and said William Francis, a son, Freeland Francis, a daughter, Elizabeth Francis, and a son, Amos Francis, and admit that the said Freeland Francis was enrolled upon the enrollment records of the said Creek Tribe of Indians opposite Roll Number 1070 as a New Born Creek Indian of three-fourths Indian blood; and admit that there was allotted by the said Commission, as his portion of the lands of said tribe, the following real estate, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East, in Okmulgee County, State of Oklahoma.

And these defendants admit that on the 10th day of December, 1908, homestead and allotment deeds or patents were issued covering said lands, and that the same were duly filed for record on the 30th day of March, 1909, and admit that Exhibits A and B to said amended petition are correct copies of said deeds or patents.

These defendants admit that the said Freeland Francis died intestate on the 22nd day of June, 1905, but deny that the said Freeland Francis left surviving him, as his sole and only heir at law, his mother, the said Annie Francis, the plaintiff herein, and deny that the plaintiff herein became the owner of said lands on the death of said Freeland Francis, and deny that the plaintiff is now the owner thereof in fee simple. These defendants admit that no administration was ever had of said estate, and that all the debts of the decedent, if any, have been fully paid and discharged.

Further answering, these defendants allege and state that the said William Francis, the father of said Freeland Francis, died prior to the death of the said Freeland Francis; that the said Freeland Francis left surviving him, his mother, the said Annie Francis, the plaintiff herein, and his brother, Amos Francis, who, at all times herein mentioned, was a minor and under the age of twenty-one (21) years, and is a duly enrolled Creek Indian citizen of the full blood; that the said Freeland Francis also left surviving him, his sister, Elizabeth Francis, who, at all times herein mentioned, was, and now is, a minor, and a duly enrolled citizen of the Creek Nation of the full Indian blood; that the said William Francis was the father of said Amos Francis and Elizabeth Francis; that the said Annie Francis, Amos Francis and Elizabeth Francis, were the sole heirs at law of the said Freeland Francis, and on the issuance of said deeds or patents, as aforesaid, the said Annie Francis became the owner in fee of an undivided one-half interest in said land, the said Elizabeth Francis became the owner of an undivided one-fourth interest in said land, and the said Amos Francis became the owner of an undivided one-fourth interest in said land. These defendants admit that on the 15th day of January, 1908, the said Annie Francis executed and delivered to Laura McGinnis, a warranty deed wherein and whereby she did convey to the said Laura McGinnis the above described lands, and admit that said deed was filed for record on the 18th day of January, 1908, and is recorded in D Book 6-A at page 6 of the records now in the office of theRegister of Deeds of Okmulgee County, Oklahoma. And defendants further allege and state that the said deed, on or about the 6th day of July, 1910, was duly approved by the Secretary of the Interior; that under and by virtue of the execution and delivery of said deed, and the approval thereof by the Secretary of the Interior, the said Laura McGinnis became the owner of an undivided one-half interest in and to said lands, and became the owner of all right, title and interest of the said plaintiff in and to said lands acquired by her, as an heir of the said Freeland Francis, deceased.

Defendants admit that on or about the 8th day of January, 1909, the said Laura McGinnis, as Laura L. McGinnis, executed and delivered to the defendants, H. L. Lightsey and John R. Taylor, her certain warranty deed, wherein and whereby she did grant, bargain, sell and convey unto the said defendants, H. L. Lightsey and John R. Taylor, the above described

lands, and admit that said deed was filed for record on the 21st day of January, 1909, and that it is recorded in Book D 17-A at page 392 of the records in the office of the Register of Deeds of Okmulgee County, State of Oklahoma, and defendants allege and state that under and by virtue of said deed, the said defendants, H. L. Lightsey and John R. Taylor, became the owners in fee of an undivided one-half interest in and to said lands.

Defendants admit that W. J. Cook is now, and was on the 10th day of October, 1911, the duly appointed, qualified and acting curator or guardian of the estates of the said minors, Amos Francis and Elizabeth Francis, and admit that on the 10th day of October, 1911, the said guardian filed his duly verified petition in the County Court of Okmulgee County, Oklahoma, alleging, among other necessary allegations for the sale of the real estate of the said minors, that the said minors were the owners of an undivided two-thirds interest in and to the above described lands, and asking for an order of said court authorizing said curator or guardian to sell the interests of his said wards in and to the said lands, and admit that afterwards such proceedings were had in said action to sell said real estate, and that on the 8th day of November, 1911, an order of sale was made by the said court, and entered upon the journals of said court in said proceedings, authorizing and directing the said curator or guardian to sell the interests of his said wards in and to said real estate; and admit that after giving the notice, as required by law, said curator or guardian, on or about the 2nd day of December, 1911, sold said real estate at public auction to the defendants, H. L. Lightsey and John R. Taylor, and admit that said sale was duly returned to the court, and that the court, on the 15th day of January, 1912, approved and confirmed said sale, and ordered and directed the said curator or guardian to execute and deliver to the said purchasers a deed to said real estate; and admit that in pursuance of said order and direction of the said court the said guardian or curator executed, acknowledged and delivered to the said purchasers a guardian's deed conveying to the said purchasers the interest of said minors in and to said lands. Defendants allege and state that the said guardian's deed was so executed and delivered on or about the 22nd day of January, 1912. Defendants further allege and state that thereafter, and on the 3rd day of March, 1912, the said deed was duly filed in the office of the United States In-

dian Superintendent at Union Agency, Muskogee, Oklahoma, with a petition praying for the approval thereof by the Secretary of the Interior; that no final action on said petition has been had by the Secretary of the Interior, but that said deed is still in the possession of the Interior Department pending the approval thereof by the said Secretary of the Interior. Defendants deny that the said County Court, or the said guardian, were without control, power or jurisdiction over said real estate, and deny that the said County Court was without jurisdiction to order or decree a sale of said minors' interests in said real estate, and confirm the sale thereof, and deny that the said guardian was without power to make and deliver the deed hereinbefore mentioned. Defendants admit that the said order confirming said sale was on or about the 15th day of January, 1912, duly filed for record with the Register of Deeds of Okmulgee County, Oklahoma, and that the same was recorded in Book M-63 at page 606 of the records in said office. Defendants deny that the said order of sale, the said sale, the said confirmation of sale, and the said curator or guardian's deed, and the record of said confirmation, are void, and deny that the same operate as a cloud upon the title of the plaintiff in and to said real estate, and defendants allege and state that under and by virtue of said deed executed by the said guardian or curator, the said defendants, H. L. Lightsey and John R. Taylor, became the owners of an undivided one-half interest in fee in and to all the above described real estate.

These defendants admit that on or about the 5th day of April, 1913, the defendants herein, H. L. Lightsey, John R. Taylor, R. C. Martin, H. M. Kirkpatrick and Thomas W. Daniel, executed to the defendant, A. W. Shulthis, a certain oil and gas mining lease covering the above described land, and admit that said lease was filed for record on the 23rd day of April, 1913, and was recorded in Book M-84 at page 146 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma, and defendants allege and state that under and by virtue of said oil and gas mining lease the said lands were granted, demised, leased and let unto the said A. W. Shulthis, his heirs, successors and assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and of building tanks, powers, stations, buildings and structures thereon, to produce, refine and otherwise prepare and take care of said production. And defendants allege and state that under and by virtue of said oil and

gas mining lease the said defendant A. W. Shulthis, his successors and assigns, acquired the full and exclusive right to operate and develop the same for oil and gas.

Defendants admit that on or about the 12th day of April, 1913, the said defendant, A. W. Shulthis, executed and delivered an agreement for the assignment of a certain interest in said oil and gas mining lease to the defendants, E. J. Lambert, W. H. Whitford and R. L. Ebling, and admit that said agreement was filed for record on April 15th, 1913, and is recorded in Book M-87 at page 41 of the records in the office of the Register of Deeds of Okmulgee County, State of Oklahoma. And defendants allege and state that under and by virtue of said agreement the said A. W. Shulthis agreed, as in said agreement stated, to assign to the said E. J. Lambert, W. H. Whitford and R. L. Ebling, an undivided one-fourth interest in and to the said oil and gas mining lease. But these defendants allege that heretofore, and subsequent to the execution of said agreement, the same was canceled, annulled and rescinded. That the defendants, W. H. Whitford, E. J. Lambert and R. L. Ebling have and claim no right, title or interest in or to said lease, or in and to said lands, or in and to the oil and gas in and under the same; that the said defendant, A. W. Shulthis is the sole holder and owner of said lease. Defendants deny that the said oil and gas mining lease and the said assignment, or either of them, are void, and deny that the same, or either of them, are clouds upon the plaintiff's title to said real estate.

PARAGRAPH TWO.

For further answer to the amended petition of the plaintiff herein, and for his counter-claim against the plaintiff herein, the defendant, A. W. Shulthis, alleges and states:

That one Freeland Francis was a duly enrolled Creek Indian of the three-fourths blood; that the said Freeland Francis was enrolled on the rolls of the Creek Nation as a New Born Creek Indian; that the said Freeland Francis departed this life intestate, unmarried and without issue, on or about the 22nd day of June, 1905; that the father of the said Freeland Francis was William Francis, who died on or about the 6th day of April 1905; that the said Freeland Francis left surviving him, his mother, Annie Francis, the plaintiff herein, and a brother and sister, Amos Francis and Elizabeth Francis. That the said Amos Francis and Elizabeth

Francis are minors and under the age of twenty-one (21) years. That the said Annie Francis, Amos Francis and Elizabeth Francis are all duly enrolled full blood Indian citizens of the Creek Nation; that there was allotted by the Commission to the Five Civilized Tribes, as the portion of the lands in the Creek Nation to which the said Freeland Francis was entitled, the following described lands situated in Okmulgee County, State of Oklahoma, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16), North, Range Thirteen (13) East;

that on the 10th day of December, 1908, patents were issued by the United States of America and the Creek Nation, whereby the said lands were duly conveyed to the heirs of Freeland Francis, deceased; that true and correct copies of said patents are set out as Exhibits A and B to the amended petition of the plaintiff herein.

That the said Annie Francis, Amos Francis and Elizabeth Francis, were the sole heirs at law of the said Freeland Francis, deceased, and as such, under and by virtue of the execution and delivery of said patents, became the owners in fee of the above described lands.

That on or about the 15th day of January, 1908, the said Annie Francis executed and delivered to the defendant herein, Laura L. McGinnis, her warranty deed wherein and whereby she did convey to the said Laura L. McGinnis, the above described land; that said deed was thereafter duly filed for record, and was recorded in Book D 6-A at page 6 of the records now in the office of the Register of Deeds of Okmulgee County, Oklahoma. That the said deed, on or about the 6th day of July, 1910, was duly approved by the Secretary of the Interior. That under and by virtue of the execution and delivery of said deed, and the approval thereof by the Secretary of the Interior, the said Laura L. McGinnis became the owner of an undivided one-half interest in and to said lands, and became the owner of all the right, title and interest of the said plaintiff in and to the said land acquired by her as an heir of the said Freeland Francis, deceased.

That on or about the 8th day of January, 1909, the said Laura L. McGinnis executed and delivered to the defendants herein, H. L. Lightsey and John R. Taylor, her certain warranty deed wherein and whereby she, the said Laura L. McGinnis, did grant, bargain, sell and convey unto the said H. L. Lightsey and John R. Taylor, the above described lands. That said deed was thereafter filed for record, and is recorded in Book D 17-A at page 392 of the records in the office of the Register of Deeds of Okmulgee County, State of Oklahoma. That under and by virtue of the execution and delivery of said deed the defendants, H. L. Lightsey and John R. Taylor, became the owners in fee of an undivided one-half interest in and to said lands.

That on or about the 10th day of October, 1911, one W. J. Cook was the duly appointed, qualified and acting guardian of the estates of the said minors, Amos Francis and Elizabeth Francis; that on said date the said guardian duly filed his verified petition in the County Court of Okmulgee County, State of Oklahoma, praying that said court enter an order authorizing him, as guardian, to sell all the interest of the said minors in and to the real estate above described; that said County Court had full and complete jurisdiction to hear and act upon the said petition; that thereafter the said County Court did authorize and direct the said guardian to sell all of the right, title and interest of the said minors in and to said real estate; that pursuant to said order the said guardian did offer for sale, and did sell, all of the right, title and interest of the said minors in and to said real estate on the 2nd day of December, 1911, to the defendants herein, H. L. Lightsey and John R. Taylor. That thereafter the said guardian duly made his return of sale to said court, and on the 15th day of January, 1912, an order was entered in said court approving and confirming said sale, and ordering and directing the said guardian to execute and deliver to the said H. L. Lightsey and John R. Taylor proper deeds of conveyance conveying the interest of said minors in and to said real estate to the said purchasers. That in pursuance of said order, the said guardian did execute, acknowledge and deliver to the said H. L. Lightsey and John R. Taylor his guardian's deed whereby he did convey unto the said purchasers all of the right, title and interest of the said minors in and to said real estate. That thereafter and under and by virtue of said deed executed by the said guardian, the said H. L. Lightsey and John R. Taylor

became the owners in fee of an undivided one-half interest in and to the above described real estate.

That thereafter and on the 5th day of April, 1913, the said H. L. Lightsey and John R. Taylor, together with R. C. Martin, H. M. Kirkpatrick and Thomas W. Daniel, all defendants herein, executed to this answering defendant, A. W. Shulthis, a certain oil and gas mining lease, whereby they, as lessors, did grant, demise, lease and let the above described lands unto the said A. W. Shulthis, his heirs, successors and assigns, for the purpose of mining and operating the same for oil and gas, and of laying pipe lines thereon, and of building tanks, powers, stations, buildings and structures thereon, to produce, refine and otherwise prepare and take care of said production. The said oil and gas mining lease was, on April 5th, 1913, filed for record in the office of the Register of Deeds of Okmulgee County, Oklahoma, and is recorded in Book M-84 at page 146 of the records in said office.

That under and by virtue of said lease, this defendant, A. W. Shulthis, has the full and exclusive right to enter upon said land and operate and develop the same for oil and gas. That prior to the commencement of this suit, said defendant, under the terms of said oil and gas mining lease, did, enter upon that part of the above mentioned lands described as follows, to-wit:

> The Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), Township Sixteen (16) North, Range Thirteen (13) East;

and has drilled thereon three wells which are producing oil in merchantable quantities, and ever since said entry has been in the sole and exclusive possession of said land under said lease.

That subsequent to the 5th day of April, 1913, the plaintiff, through her agents, servants and employees, unlawfully entered upon that part of the above mentioned lands described as follows, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), Township Sixteen (16) North, Range Thirteen (13) East;

that the said plaintiff, through her said agents, servants and

employees, has unlawfully, and with force, kept said defendant from entering upon the last above described lands for the purpose of operating and developing the same for oil and gas. That there are wells on the lands immediately adjoining the last above described lands producing oil in large and merchantable quantities; that said wells are immediately adjacent to the lines of the lands last above described, and that the oil in and under said lands is being rapidly drained off through said wells, to the great and irreparable injury of said defendant, and to his leasehold estate acquired under and by virtue of the oil and gas mining lease hereinbefore mentioned. That by reason of said acts of the plaintiff, her agents, servants and employees hereinbefore mentioned, the estate of these defendants in and to said last above described lands is being wasted, and that the exact amount of oil so being drained from said lands, as aforesaid, cannot be measured, and that these defendants have no adequate remedy at law in the premises.

Wherefore, having fully answered the allegations of the amended petition of the plaintiff, so far as material to these defendants, these defendants pray that the plaintiff take nothing by her amended petition herein as against these defendants, and that these defendants have their costs herein incurred.

Said defendant, A. W. Shulthis, further prays that judgment and decree be entered herein restraining and enjoining the plaintiff, her agents, servants and employees, from in anywise preventing or interfering with the entry of these defendants upon the last above described lands for the purpose of operating and developing the same for oil and gas; that the title of these defendants in and to their leasehold estate in said last above described lands, acquired under and by virtue of the said oil and gas mining lease executed as aforesaid on April 5th, 1913, be quieted as against all claims and demands of the plaintiff; that these defendants may have such other and further equitable relief in the premises to which they may be entitled.

These defendants further pray that pending the final decision of this cause an order be entered herein restraining and enjoining the plaintiff, her agents, servants and employees, from in anywise preventing or interfering with the entry of these defendants upon the last above described lands for the purpose of operating and developing the same for oil and gas,

and from interfering in anywise with these defendants in the operation and development of said lands for oil and gas.

GEO. S. RAMSEY,
C. L. THOMAS,
Attorneys for Defendants, A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling.

State of Kansas, County of Montgomery—ss.

A. W. Shulthis being first duly sworn on his oath states: That he is one of the answering defendants named in the foregoing answer; that he has read the same and knows the contents thereof, and that the matters and things therein stated are true.

A. W. SHULTHIS.

Subscribed and sworn to before me this the 11th day of November, 1913.
(Seal) Ernest Sewell, notary public.
My Com. Exp. April 5th, 1915.

Endorsed: Filed Dec. 10, 1913, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 10th day of December, A. D. 1913, the defendant Laura L. McGinnis filed answer herein, which is in words and figures as follows:

Answer of Laura L. McGinnis to Amended Petition.

Comes now the defendant, Laura L. McGinnis, by her attorneys, R. C. Martin and H. M. Kirkpatrick, and for her answer to the amended petition of the plaintiff herein alleges and states:

She admits that the plaintiff is a member of the Creek Tribe of Indians, and that she is enrolled as a full blood opposite roll number 8304 upon the Dawes Commission records, and admits that she married William Francis, who was enrolled as a member of the Creek Tribe of Indians of the one-half blood opposite roll number 460 of the said Commission, and admits that the said William Francis died on or about the 6th day of April, 1905, and admits that there was born to the said plaintiff and said William Francis, a son, Freeland Fran-

cis, a daughter, Elizabeth Francis, and a son, Amos Francis, and admits that the said Freeland Francis was enrolled upon the enrollment records of the said Creek Tribe of Indians opposite roll number 1070 as a New Born Creek Indian of three-fourths Indian blood; and admits that there was allotted by the said Commission, as his portion of the lands of said tribe, the following real estate, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East, in Okmulgee County, State of Oklahoma.

And this defendant admits that on the 10th day of December, 1908, homestead and allotment deeds or patents were issued covering said lands, and that the same were duly filed for record on the 30th day of March, 1909, and admits that Exhibits A and B to said amended petition are correct copies of said deeds or patents.

This defendant admits that the said Freeland Francis died intestate on the 22nd day of June, 1905, but denies that the said Freeland Francis left surviving him, as his sole and only heir at law, his mother, the said Annie Francis, the plaintiff herein, and denies that the plaintiff herein became the owner of said lands on the death of said Freeland Francis, and denies that the plaintiff is now the owner thereof in fee simple. This defendant admits that no administration was ever had of said estate, and that all the debts of the decedent, if any, have been fully paid and discharged.

Further answering, this defendant alleges and states that the said William Francis, the father of said Freeland Francis, died prior to the death of the said Freeland Francis; that the said Freeland Francis left surviving him, his mother, the said Annie Francis, the plaintiff herein, and his brother, Amos Francis, who, at all times herein mentioned, was a minor and under the age of twenty-one (21) years, and is a duly enrolled Creek Indian citizen of the full blood; that the said Freeland Francis also left surviving him, his sister, Elizabeth Francis, who, at all times herein mentioned, was, and now is, a minor, and a duly enrolled citizen of the Creek Nation of the full Indian blood; that the said Annie Francis, Amos Francis and

Elizabeth Francis, were the sole heirs at law of the said Freeland Francis, and on the issuance of said deeds or patents, as aforesaid, the said Annie Francis became the owner in fee of an undivided one-half interest in said land, the said Elizabeth Francis became the owner of an undivided one-fourth interest in said land, and the said Amos Francis became the owner of an undivided one-fourth interest in said land. This defendant admits that on the 15th day of January, 1908, the said Annie Francis executed and delivered to this defendant, a warranty deed wherein and whereby she did convey to this said defendant the above described lands, and admits that said deed was filed for record on the 18th day of January, 1908, and is recorded in D Book 6-A at page 6 of the records now in the office of the Register of Deeds of Okmulgee County, Oklahoma. And defendant further alleges and states that the said deed, on or about the 6th day of July, 1910, was duly approved by the Secretary of the Interior; that under and by virtue of the execution and delivery of said deed, and the approval thereof by the Secretary of the Interior, this defendant became the owner of an undivided one-half interest in and to said lands, and became the owner of all right, title and interest of the said plaintiff in and to said lands acquired by her, as an heir of the said Freeland Francis, deceased.

Defendant admits that on or about the 8th day of January, 1909, this defendant executed and delivered to the defendants, H. L. Lightsey and John R. Taylor, her certain warranty deed, wherein and whereby she did grant, bargain, sell and convey unto the said defendants, H. L. Lightsey and John R. Taylor, the above described lands, and admits that said deed was filed for record on the 21st day of January, 1909, and that it is recorded in Book D 17-A at page 392 of the records in the office of the Register of Deeds of Okmulgee County, State of Oklahoma, and defendant alleges and states that under and by virtue of said deed, the said defendants, H. L. Lightsey and John R. Taylor, became the owners in fee of an undivided one-half interest in and to said lands.

This defendant further alleges and states that under and by virtue of the execution and delivery of said deed on the 8th day of January, 1909, to the defendants herein, H. L. Lightsey and John R. Taylor, she parted with all her right, title and interest in and to said lands, and every part thereof, and, therefore, makes no claim in and to the same, or any part thereof.

Wherefore, having answered the amended petition of the plaintiff herein, so far as material to this defendant, this defendant prays that the plaintiff take nothing in this suit as against her, and that the said petition of the plaintiff be dismissed as to this defendant, and that this defendant have her costs herein incurred.

R. C. MARTIN,
H. M. KIRKPATRICK,
Attorneys for Defendant, Laura L. McGinnis.

Endorsed: Filed Dec. 10, 1913, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 12th day of December, A. D. 1913, the defendant Harry H. Bell, filed answer herein, which is in words and figures as follows:

Separate Answer of Defendant Harry H. Bell.

I.

Comes now the defendant, Harry H. Bell, and for his separate answer to the amended petition herein filed by the plaintiff alleges and states:

That he admits that the plaintiff is a member of the Creek Tribe of Indians, and that she is enrolled as a full blood, opposite roll No. 8304 upon the records of the Commission to the Five Civilized Tribes, and admits that she married William Francis, who was also enrolled as a member of the Creek Tribe of Indians enrolled as a one-half blood, opposite roll No. 460 of the records of the Commission to the Five Civilized Tribes, and admits that the said William Francis died on or about the 6th day of April, 1905, and that there was born to the plaintiff and the said William Francis a son, Freeland Francis, a daughter, Elizabeth Francis, and a son, Amos Francis, and that the said Freeland Francis was enrolled upon the records of the Commission to the Five Civilized Tribes of Indians, opposite roll No. 1070 as a new born Creek Indian of three-fourths blood, and that there was allotted by the said Commission as a portion of the lands of said tribe to which the said Freeland Francis would have been entitled if living the real estate described in the petition as the East Half of the Southeast quarter, and the Southwest quarter of the Southeast

quarter of Section twenty-five and the Southeast quarter of the Southwest quarter of Section twenty-six, all in Township sixteen North, Range thirteen East of the Indian Base and Meridian in Okmulgee County, Oklahoma, and he avers that the said Freeland Francis died without selecting the said land, or any other land as the allotment to which he would have been entitled if he had remained alive, and that thereafter on the 4th day of December, 1907, the said described land was selected by the heirs of Freeland Francis, then deceased, as the land to which he would have been entitled if living, and subsequently on the 10th day of December, 1908, patents covering the said land were duly issued to the said heirs and filed for record as alleged in the amended petition herein.

This defendant admits that the said Freeland Francis died intestate on the 22nd day of June, 1905, and admits that he left surviving him his mother, the plaintiff herein, and, his brother and sister aforesaid, and also a half brother, Mack Francis, but this defendant denies that the said Annie Francis was the sole heir of Freeland Francis, deceased, and denies that she became the owner of all of the lands in controversy at the selection thereof, and denies that the plaintiff is now the owner in fee simple of said land, but admits that no administration of the estate of Freeland Francis was ever had, and admits that all of the debts of said Freeland Francis have been fully paid and discharged.

Further answering the defendant states that he has no information other than that contained in the amended petition herein as to the execution and recording of the various instruments numbered from 1 to 17 as specifically set out in paragraph D of the said amended petition, and therefore denies that the said instruments were executed and prays that strict proof of the execution and delivery of the same be required.

And this defendant further answering so much of the said petition as effects him and as he is advised he is obliged to answer denies that the plaintiff can only imperfectly read and understand the English language, and denies that she has had no business experience whatever, and denies that she is entirely unacquainted with the value of lands and with the means and procedure of conveying lands and title thereto.

Further answering the defendant denies that on the 27th day of February, 1913, the plaintiff was the owner by inheri-

tance of all the land described in the petition herein, but admits that on the said date the plaintiff was the owner of an undivided one-half interest in said land, and the defendant denies that the said lands had been the allotment of Freeland Francis, a deceased Creek minor, as alleged in the amended petition herein, but admits that the said Freeland Francis died intestate and without issue on or about the 1st day of June, 1905, and admits that the plaintiff herein was the mother and sole surviving parent of the said minor, and that the plaintiff is a full blood, and that she was an heir of the said Freeland Francis, deceased.

Further answering the defendant states and avers the fact to be that the said Freeland Francis was a full blood Indian and a citizen of the Creek Nation; that he died intestate and without issue, and that he was a minor on or about the 1st day of June, 1905, the date of his death, and that he died without having selected an allotment of lands in the Creek Nation, and he avers and charges the fact to be that thereafter on the 4th day of December, 1907, the lands in controversy herein were selected by and for the heirs of the said Freeland Francis, and allotted to them as hereinabove set out, and he avers that Wm. J. Cook is the duly appointed and acting guardian of Amos Francis and Elizabeth Francis, the brother and sister of the said Freeland Francis, deceased.

The defendant admits that on the 27th day of February, 1913, the plaintiff executed and delivered to him a deed conveying all of her interest in the land described in the amended petition herein, but denies that said deed was procured by this defendant by any false or fraudulent representations made to the plaintiff, and denies that he represented or stated to the plaintiff that the said conveyance was a lease on said land for a term of five years, or for any other term, and denies that he made any false statement relative to the said land, or to the said conveyance to the plaintiff at the time, or prior, or subsequent to the execution of said deed. The defendant admits that he thereafter secured an order of the County Court of Okmulgee County, Oklahoma, approving the said deed of conveyance to him, but denies that the said approval was procured by fraud and misrepresentation practiced upon the said court, and denies that this defendant procured any false or fraudulent testimony relative to the value of said land to be introduced in the said court and offered to the judge thereof, and denies that any testimony was in fact introduced in

said court upon said hearing or produced before the judge thereof, which was in any way false or fraudulent, or in any way misrepresented the then condition and value of said land. And the defendant denies that the said land was at the time of the said conveyance, or the approval thereof, worth the sum of $4000.00, and states the fact to be that at the time of the conveyance of said land and the approval of said deed the land in controversy was of small value, and that the amount paid by this defendant was an adequate consideration for the conveyance of the interest of plaintiff therein, and was paid by him and received by the plaintiff in good faith.

The defendant denies that the plaintiff has at any time since the execution of said deed learned that it was in fact not a lease, and that she had been misled into executing a deed while thinking that she was executing a lease, and states the fact to be that the plaintiff was fully aware of the effect of her said conveyance and executed the same in good faith and for a valuable consideration paid to her at the time of the execution thereof, and that she fully understood and was fully informed as to the effect of the said deed, and that she intended to and did thereby convey to this defendant all of her interest in the said land in good faith and without misrepresentation to her and without fraud or false statements made to her.

The defendant denies that at the time of the execution of the said deed he made any misrepresentations to the said plaintiff that she was executing only a lease upon said land, and denies that at the time of the said conveyance the land was worth at least the sum of $4000.00, and denies that the plaintiff relied upon any statement made by this defendant, or that this defendant made any statement that the instrument executed was a lease only, and denies that the plaintiff delivered the said deed as and for a lease, and denies that this defendant accepted it for no other purpose whatever.

The defendant further answering states that he is not informed as to whether the plaintiff was legally married on January 15, 1907, to Willie Harris, and asks that strict proof thereof be made, and avers that he is informed and believes that the said Willie Harris is a negro of African descent, and that the plaintiff could not and did not legally marry him on January 15, 1907, and that if the plaintiff and the said Willie Harris did attempt to enter into the marriage relation on said date, that said attempt was void and without effect.

That this defendant denies the execution of the various deeds set out in the amended petition herein to the other defendants herein and their grantors, and avers that if the said deeds were so made, that they were made without authority and at a time when the grantors therein were unable and not vested with right to convey the said land, and that the said deeds are void.

Wherefore, this defendant having answered the allegations of the amended petition of the plaintiff so far as material to him, prays that the plaintiff take nothing by her said amended petition herein; that the same be dismissed as to this defendant, and that this defendant have his costs herein incurred, and such other and general relief as he may be entitled to in good conscience.

II.

Further answering the amended petition herein and for his counter claim and cross demand against the plaintiff, Annie Harris, formerly Annie Francis, and against his codefendants herein, A. C. Brady, Frank F. Lamb, Eugene W. Gill, William H. Harris, L. A. Bell, The Hoppy Toad Oil and Gas Company, J. A. Wood, H. R. Pierson, A. B. Miller, Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey, John R. Taylor, A. W. Shulthis, E. J. Lambert, W. M. Whitford, R. L. Ebling, Gertrude Womack, Harry F. Eagan, Maud Mitchell, Amos Francis and Elizabeth Francis, minors, and W. J. Cook, their guardian, J. Orlando *Brown*, and Howell H. Brown, this defendant alleges and state[s] that he is the owner in fee simple of an undivided one-half interest in the lands in controversy herein and described in the amended petition herein, situated in Okmulgee County, State of Oklahoma, to-wit:

The East Half of the Southeast Quarter, and the Southwest Quarter of the Southeast Quarter of Section 25, and the Southeast Quarter of the Southwest Quarter of Section 26, all in Township 16 North, Range 13 East; that this defendant derived and acquired title to the said real estate as follows:

That the plaintiff herein is a duly enrolled full blood Creek Indian, and formerly was legally married to one William Francis; that the said William Francis was a duly enrolled citizen of the Creek Tribe of Indians enrolled as a three-fourth blood, and that on or about the 30th day of April, 1903, there was born to the said plaintiff and to the said William

Francis a son, Freeland Francis, who died on or about June 22, 1905, intestate and without issue within the limits of the Creek Nation, and within what is now Okmulgee County, Oklahoma, and that said Freeland Francis left surviving him his mother, the plaintiff herein, a brother, Amos Francis, and a sister, Elizabeth Francis, children of the same mother and father, and a brother, Mack Francis, the son of the same father but of a different mother; that the said Freeland Francis died without having selected the lands to which he was entitled as a citizen of the Creek Nation, and that thereafter on or about the 4th day of December, 1907, the heirs of the said Freeland Francis selected the lands in controversy herein as the allotment to which the said Freeland Francis would have been entitled if living, and that patents for the same were duly issued thereafter on the 10th day of December, 1908, and that by such patents the title to said land was conveyed to the heirs of the said Freeland Francis, deceased, and said patents were duly recorded in the office of the Commissioner to the Five Civilized Tribes; that the plaintiff was the owner of an undivided one-half interest in said land; that on the 27th day of February, 1913, the plaintiff, Annie Francis, for a valuable consideration, to-wit, the sum of $225.00, conveyed to him all of her interest in the said described land by warranty deed duly executed and delivered by her to him, and that the said deed was thereafter on the 27th day of February, 1913, duly approved by the County Court of Okmulgee County, Oklahoma, which was the county having jurisdiction of the settlement of the estate of the said Freeland Francis, deceased, and that by the said deed and the approval thereof this plaintiff became vested with the full and complete title to an undivided one-half interest in and to all of the land described herein and in controversy in this action, and that immediately after the execution of the said deed this defendant entered into possession of the said land and was in the actual possession thereof at the time of the institution of this suit.

That all of the defendants hereinabove named are claiming or asserting some right, title or interest to the lands in controversy, the exact natu[r]e of which is to this defendant unknown, but this defendant is informed and believes that the defendants are claiming certain interests by virtue of various conveyances made to them by the plaintiff, and by other parties the exact nature of which is unknown to this defendant, but that this defendant is informed that his co-defendants are

claiming some interest in said land by virtue of a deed executed by the plaintiff to Laura L. McGinnis on January 15, 1908, recorded in the office of the Register of Deeds of Okmulgee County, Oklahoma, in Book D 6 A at page 8, and that thereafter on the 8th day of January, 1909, the said Laura L. McGinnis did attempt to convey her interest in said land to the defendant, H. L. Lightsey and John R. Taylor, and that her deed to said grantees was recorded in Book D 17 A at page 392 of the records of the office of Register of Deeds of Okmulgee County, Oklahoma, and that thereafter on the 12th day of March, 1913, the defendants, H. L. Lightsey and John R. Taylor, executed and delivered to the defendant, R. C. Martin, H. M. Kirkpatrick and Thomas W. Daniel, their certain conveyance conveying an interest in said land, which said instrument was recorded in the office of the Register of Deeds of Okmulgee County, Oklahoma, in Book M 83 at page 467, and thereafter on the 7th day of July, 1913, the defendant, John R. Taylor, executed and delivered to the defendant, John V. McMahon, a quit claim deed conveying his interest to the lands in controversy, which deed was recorded in the office of the Register of Deeds of Okmulgee County, Oklahoma, in Book M 77 at page 333; that the defendant denies that any of the said deeds operated to convey title, and alleges that the said deeds were executed without consideration and at a time when the grantors therein had no legal right to convey, and this defendant specially pleads that since the 27th day of February, 1913, he has been in the actual possession of the land in controversy herein, and that the deeds above referred to given by H. L. Lightsey and John R. Taylor to the defendants, R. C. Martin, H. M. Kirkpatrick and Thomas W. Daniel, and the deed dated April 7, 1913, given by the defendant, John R. Taylor, t*h* the defendant, John V. McMahon, and a certain oil and gas lease executed by all of the said named grantees under the plaintiff herein to Albert W. Shulthis, the defendant, were and are void and champertous, and were given at a time when this defendant was in actual possession of the land in controversy, and when same was in litigation in this action, and at a time when neither the said grantees nor their grantors had been in the possession of said land for a period of one year, or had taken rents and profits therefrom for a period of one year, and that the said deeds are therefore void and of no effect as against this defendant.

That a true and correct copy of the deed of the said Annie Francis, the plaintiff herein, to this defendant, and of the order of approval thereof, are hereto attached and made a part of this cross petition, marked defendant's Exhibits "A" and "B" respectively.

In consideration whereof, and to the end that the defendants herein may, if they can, show why this answering defendant should not have the relief prayed for, and may make a full disclosure of all matters aforesaid, and true and perfect answer make to the matters and things stated in this counter claim of this answering defendants, this defendant prays:

1st. That the defendants and plaintiff be required to set forth their right, title and interest, if any they have, in and to the above described lands.

2nd. That this court, by proper decree, adjudge this defendant to be the owner in fee of one-half of the above described land, and that the other defendants and the plaintiff have no right, title or interest whatsoever in the premises.

3rd. That the title and interest of this defendant to an undivided one-half interest in said land be quieted, and that the plaintiff and the said co-defendants herein be barred and enjoined from setting up or asserting any title or interest in said premises adverse to the title of this defendant.

4th. That the deeds and leases mentioned and described herein above and in the amended petition herein other than that to this defendant, be declared void and ordered cancelled of record as clouds upon the title of this defendant.

5th. That this defendant have such other and further relief in the premises as he may be entitled to in equity and good conscience.

GIBSON & THURMAN,
Attorneys for Defendant, Harry H. Bell.

DEFENDANT'S EXHIBIT "A."

Deed—General Warranty.

This Indenture, Made this 27th day of February, A. D. 1913, between Annie Francis of Okmulgee County, in the State of Oklahoma, of the first part, and Harry H. Bell, of the second part:

Witnesseth: That said party of the first part, in consideration of the sum of Two Hundred Twenty-five ($225.00) Dollars, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto said party of the second part, his heirs and assigns all of the following described real estate, situated in the County of Okmulgee, and State of Oklahoma, to-wit:

The East Half of the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section Twenty-five (25), and the Southeast Quarter of the Southwest Quarter of Section Twenty-six (26) all in Township Sixteen (16) North, Range Thirteen (13) East.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, forever:

And said Annie Francis for herself, her heirs, executors, or administrators, does hereby covenant, promise and agree to and with said party of the second part, that at the delivery of these presents, she is lawfully seized in her own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrance of what nature or kind soever, and she will warrant and forever defend the same unto the said party of the second part, his heirs and assigns, against the said party of the first part, her heirs and all and every person or persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, The said party of the first part has hereunto set her hand the day and year first above written.

ANNIE FRANCIS.

Approved Feby. 27th, 1913. Mark L. Bozarth, County Judge. (Seal).

Appd. Feby. 28, 1913, Thos. W. Leahy, Co. Judge Muskogee Co., Okla. (Seal).

ACKNOWLEDGMENT.

State of Oklahoma, County of Okmulgee—ss.

Before me, Lena Grubb, a notary public in and for said county and state, on this 27th day of February, 1913, person-

ally appeared Annie Francis and ..... to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal the day and year above written.

Lena Grubb, Notary Public.

My commission expires Oct. 21-1913. (Seal)

Endorsed: Warranty deed, Annie Francis to Harry H. Bell. State of Oklahoma, Okmulgee County.—ss. Filed in the office of the Register of Deeds of said county and state, on the 27th day of Feb. 1913, at 10 o'clock 50 minutes A. M., and duly recorded in Book D 85 of deeds at page 90. Eva Russel, Register of Deeds. (Seal).

DEFENDANT'S EXHIBIT "B."

In the County Court in and for Okmulgee County, State of Oklahoma. In the Matter of the Application of Annie Francis for the Approval of a Deed Made by Her to Harry H. Bell.

Order Approving Deed.

This cause coming on to be heard upon the petition of Annie Francis for the approval of a deed made by her for her interest in the East Half of the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section Twenty-five (25) and the Southeast Quarter of the Southwest Quarter of Section Twenty-six (26) Township Sixteen (16) North, Range Thirteen (13) East in Okmulgee County, Oklahoma, being the allotment of Freeland Francis deceased, and it appearing to the court that said Freeland Francis died intestate in the year 1905, single and without issue, in what was then the Creek Nation, Indian Territory, and that at the time of his death he left surviving him as his next of kin, Annie Francis the petitioner in this cause, mother, and Mack Francis and Amos Francis brothers and Elizabeth Francis a sister; that the petitioner herein Annie Francis, is a full blood Creek Indian and so enrolled, and that she made, executed and delivered a deed to Harry H. Bell on the 27th day of February, 1913, in consideration of $225.00 and prays for the approval of the same by this court, and the same having been considered after the evidence is heard, and the court being of the opinion

that the interest conveyed by the said Annie Francis to the said Harry H. Bell in consideration of $225.00 should be approved and that the said is and adequate price for the interest sold in and to said premises.

It is therefore ordered, adjudged and decreed that the deed made, executed and delivered on the 27th day of February, 1913, conveying the interest of said Annie Francis to Harry H. Bell in and to the East Half of the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section Twenty-five (25) and the Southeast Quarter of the Southwest Quarter of Section Twenty-six (26) in Township Sixteen (16) North, Range Thirteen (13) East in Okmulgee County, Oklahoma, be and the same is hereby approved.

Dated this 27th day of February, 1913.

(Seal)

MARK L. BOZARTH,
Judge of the County Court.

Endorsed: Fullblood No. 572. In the matter of the application of Annie Francis for the approval of a deed made by her to Harry H. Bell. Order approving deed. Filed Feb. 27, 1913, County of Okmulgee, State of Okla. W. F. Preddy, Clerk of County Court. Deed Index Book 2, page 115.

Endorsed: Filed Dec. 12, 1913, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 16th day of December, A. D. 1913, the defendants Eugene W. Gill, Frank F. Lamb and A. C. Brady filed their answer herein, which is in words and figures as follows:

Joint and Several Answer of Eugene W. Gill, Frank F. Lamb, and A. C. Brady.

Come now the defendants, Eugene W. Gill, Frank F. Lamb and A. C. Brady, and for their answer to the amended petition of the plaintiff herein allege and state:

That they admit that the plaintiff is a member of the Creek tribe of Indians, and that she is enrolled as a full blood Indian opposite Roll Number 8304 upon the Dawes Commission records, and admit that she married William Francis who was enrolled as a member of the Creek tribe of Indians of the

one-half blood opposite Roll Number 460 of the said Commission, and admit that the said William Francis died on or about the 6th day of April, 1905, and admit that there was born to the said plaintiff and said William Francis a son, Freeland Francis and a daughter, Elizabeth Francis. Defendants admit that Amos Francis is a son of the plaintiff, but deny that William Francis was the father of the said Amos Francis. Defendants admit that the said Freeland Francis was enrolled upon the enrollment records of the said Creek tribe of Indians opposite Roll Number 1070 as a new-born Creek Indian of three-quarter Indian blood, and admit that there was allotted by the said Commission, as his portion of the lands of said tribe, the following real estate, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East, in Okmulgee County, State of Oklahoma;

And these defendants admit that on the 10th day of December, 1908, homestead and allotment deeds or patents were issued covering said lands, and that the same were duly filed for record on the 30th day of March, 1909, and admit that Exhibits A and B to said amended petition are correct copies of said deeds or patents. These defendants admit that the said Freeland Francis died intestate on the 22nd day of June, 1905, but deny that the said Freeland Francis left surviving him, as his sole heir at law, his mother, the said Annie Francis, the plaintiff herein, and deny that the plaintiff herein became the owner of said land on the death of said Freeland Francis, and deny that the plaintiff is now the owner thereof in fee simple. These defendants admit that no administration was ever had on said estate, and that all the debts of the decedent, if any, have been fully paid and discharged, and allege and state that the said Freeland Francis died within the limits of the Creek Nation, and within the limits of what is now Okmulgee County, Oklahoma.

Further answering these defendants allege and state that the said William Francis, the father of the said Freeland Francis, died prior to the death of the said Freeland Francis; that William Francis was married to one Silla Francis; that

there was born to the said William Francis and Silla Francis, a son, Mack Francis, who is a duly enrolled mixed blood Indian citizen of the Creek Nation; that the said Freeland Francis left surviving him, his mother, the said Annie Francis, the plaintiff herein, and his brother, Amos Francis, and a sister, Elizabeth Francis, and his brother, the said Mack Francis; that the said Annie Francis, Amos Francis, Elizabeth Francis and Mack Francis were the sole heirs at law of the said Freeland Francis, and on the issuance of said deeds or patents as aforesaid, the said Annie Francis became the owner in fee of an undivided one-half interest in said land, and the said Amos Francis, Elizabeth Francis and Mack Francis, each, became the owner of an undivided one-sixth interest in said land.

These defendants admit that on the 15th day of January, 1908, said Annie Francis executed and delivered to Laura McGinnis, a warranty deed, wherein and whereby she did convey to the said Laura McGinnis the above described land, and admit that said deed was filed for record on the 18th day of January, 1908, and is recorded in D Book 6-A at page 6 of the records now in the office of the Register of Deeds of Okmulgee County, Oklahoma, and defendants further allege and state that said deed, on or about the 6th day of July, 1910, was duly approved by the Secretary of the Interior; that under and by virtue of the execution and delivery of said deed, and the approval thereof by the Secretary of the Interior, the said plaintiff parted with and conveyed all her right, title and interest in said land acquired by her as an heir of the said Freeland Francis, deceased.

Defendants admit that on or about the 9th day of November, 1909, the said Mack Francis executed and delivered to the defendants, A. C. Brady and Frank F. Lamb, his certain warranty deed wherein and whereby he did convey to the said defendants the above described land, and admit that said deed was filed for record, and is recorded in book D-27-A at page 260 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

And defendants admit that on or about the 9th day of March, 1910, the said Mack Francis did execute and deliver to Maude Mitchell of Muskogee, Oklahoma, his certain deed wherein and whereby he did convey to the said Maude Mitchell the above described land, and that thereafter the said deed was recorded in Book D-28-A at page 525 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

Defendants admit that on or about the 9th day of April, 1910, the said Mack Francis did execute and deliver to the said Maude Mitchell his certain deed wherein and whereby he did convey to the said Maude Mitchell an undivided one-half interest in the above described lands, and admit that said deed was filed for record and is recorded in book D-28-A at page 595 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

And defendants allege and state that thereafter, and prior to May 1st, 1912, the said Maude Mitchell departed this life intestate, leaving no issue surviving her, and leaving surviving her, her husband, J. Orlando Mitchell, as her sole heir at law, and defendants admit that on said May 1st, 1912, the said J. Orlando Mitchell executed and delivered to Howell H. Brown his certain deed whereby he did convey to the said Howell H. Brown, an undivided one-half interest in the above described lands; that thereafter said deed was filed for record and is recorded in book D-39-A at page 588 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

And defendants admit that thereafter and on October 5th, 1912, the said Howell H. Brown and Cora L. Brown, his wife, did execute and deliver to Harry F. Egan their certain deed whereby they did convey to the said Harry F. Egan an undivided one-half interest in the above described land; that said deed was recorded in book D-76 at page 263 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

And defendants admit that thereafter and on May 9th, 1913, the said Harry F. Egan did execute and deliver to the defendant, Eugene W. Gill, his certain quit claim deed wherein and whereby he did convey to said defendant all of his right, title and interest in and to the above described land. Thereafter the said deed was recorded in Book M-77 at page 307 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

Defendants further allege and state that under and by virtue of said deed executed as aforesaid these defendants are the owners in fee simple of an undivided one-sixth interest in and to the above described lands.

And defendants deny that the said deed executed as aforesaid by the said Mack Francis to the said A. C. Brady and Frank Lamb, and the said deeds executed as aforesaid by the said Mack Francis to the said Maude Mitchell, and the said

deeds executed as aforesaid by the said J. Orlando Mitchell to the said Howell H. Brown, and by Howell H. Brown to Harry F. Egan, and by Harry F. Egan to Eugene W. Gill, are void.

Wherefore, these defendants having answered the allegations of the amended petition of the plaintiff, so far as material to them, pray that the plaintiff take nothing by her said amended petition herein, and that the said [ ] be dismissed as to these defendants; that these defendants have their costs herein incurred, and have such other and general relief to which they may be entitled.

Paragraph Two.

Further answering the amended petition herein, and for their counter claim and cross demand against the plaintiff, Annie Harris, *nee* Francis, and against the co-defendants herein, Harry H. Bell, William H. Harris and L. A. Bell, the Hoppy-Toad Oil and Gas Company, J. A. Wood, H. R. Pierson, A. B. Miller, A. W. Shulthis, H. L. Lightsey, John R. Taylor, H. M. Kirkpatrick, R. C. Martin, Thos. W. Daniel and John V. McMahon, allege and state:

That these defendants are the owners in fee simple absolute of an undivided one-sixth interest in the lands involved herein, and described in the amended petition herein, situated in Okmulgee County, State of Oklahoma, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East;

That one William Francis was a duly enrolled mixed blood Indian citizen of the Creek Nation; that the said William Francis was lawfully married to one Silla Francis; that the said Silla Francis departed this life prior to the death of her husband, the said William Francis; that the said William Francis died on or about the 6th day of April, 1905; that there was born to the said William Francis and the said Silla Francis a son, Mack Francis, who was a duly enrolled mixed blood Indian citizen of the Creek Nation; that the said Mack Francis departed this life on or about the .... day of March, 1912; that subsequent to the death of the said Silla Francis the said William Francis married the plaintiff herein, Annie Harris, *nee* Francis; that there was born to the said Annie Harris, *nee*

Francis, and the said William Francis a son, Freeland Francis, and a daughter, Elizabeth Francis; that the said Freeland Francis was born on or about the .... day of January, 1903, and died intestate on or about the 22nd day of June, 1905; that there was born to the said Annie Francis a son, Amos Francis; that the said Amos Francis and the said Elizabeth Francis are now living; that the said Freeland Francis left surviving him, his mother, the plaintiff, his brother, the said Amos Francis, his sister, the said Elizabeth Francis, and his brother, the said Mack Francis, and that the said Elizabeth Francis, Amos Francis and Mack Francis, were the sole heirs at law of the said Freeland Francis; that the said Freeland Francis was enrolled upon the enrollment records of the said Creek Tribe of Indians opposite Roll Number 1070 as a new born Creek Indian of three-fourths Indian blood; that there was allotted, in the name of the said Freeland Francis, as his proportionate share of the lands of the Creek Nation the above described lands; that on the 10th day of December, 1908, deeds or patents were issued by the United States of America and the Creek Nation whereby the above described lands were duly conveyed to the heirs of the said Freeland Francis, deceased; that said patents were thereafter duly recorded in the office of the Commissioner to the Five Civilized Tribes, and true and correct copies of said deeds or patents are attached to the amended petition of the plaintiff herein as Exhibits A and B.

That under and by virtue of the conveyances executed by the said Mack Francis, and set out in paragraph one hereof, and as set out in the amended petition of the plaintiff herein, these defendants are the owners in fee simple of an undivided one-sixth interest in and to said lands.

Defendants further allege and state that on the 15th day of January, 1908, the said plaintiff executed and delivered to the defendant, Laura L. McGinnis, a certain warranty deed wherein and whereby she did purport to convey the entire interest in the above described lands; that said deed was filed for record on the 18th day of January, 1908, and is recorded in Book D-6-A at page 6 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter and on January 8th, 1909, the said Laura L. McGinnis did execute and deliver to the defendants herein, H. L. Lightsey and John R. Taylor, her certain warranty deed wherein and whereby she did purport to convey the entire interest in the above described lands; that thereafter the said

deed was filed for record and recorded in book D-17-A at page 392 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter and on January 22nd, 1912, under an order of the County Court of Okmulgee County, Oklahoma, W. J. Cook, as guardian of the estates of the said Amos Francis and Elizabeth Francis, executed and delivered to the defendants, H. L. Lightsey and John Taylor, his guardian's deed wherein and whereby he did, as guardian, convey to the said H. L. Lightsey and John Taylor, all right, title and interest of the said minors in and to the above described lands; that the said John Taylor named as grantee in said deed, and the defendant herein, John R. Taylor, are one and the same person.

That thereafter and on or about the 12th day of March, 1913, the said defendants, H. L. Lightsey and John R. Taylor, executed and delivered to the defendants herein, R. C. Martin, H. M. Kirkpatrick and Thos. W. Daniel, their certain agreement conveying an interest in said above described lands; that said agreement is recorded in book M-83 at page 467 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma; that thereafter and on or about April 7th, 1913, the defendant John R. Taylor executed and delivered to the defendant, John V. McMahon his certain quit claim deed wherein and whereby he did convey to the said defendant, John V. McMahon, all his right, title and interest in and to said lands; that said deed was filed for record and is recorded in book M-77 at page 333 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That on or about October 17th, 1908, the plaintiff herein executed and delivered to J. A. Wood her deed, whereby she did purport to convey to said defendant, J. A. Wood, the above described lands; that said deed was filed for record and is recorded in book D-17-A at page 205 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter and on or about December 8th, 1908, the plaintiff executed and delivered to the defendant, H. R. Pierson, her certain deed whereby she did purport to transfer and convey unto the said defendant the above described lands; that said deed was filed for record and is recorded in book D-17-A at page 303 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter and on March 9th, 1910, the said Mack Francis did execute and deliver to the said defendant, A. B.

Miller, a certain deed purporting to convey all of his right, title and interest in and to said lands; that said deed was thereafter filed for record and is recorded in book D-28-A at page 521 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter and on April 13th, 1910, the said Mack Francis did execute and deliver to the defendants, William H. Harris and L. A. Bell, a certain deed, wherein and whereby he did purport to convey to said defendants all of his interest in the above described lands; that said deed was thereafter filed for record and is recorded in book D-28-A at page 599 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That thereafter and on February 27th, 1913, the plaintiff herein, as Annie Francis, did execute and deliver to the defendant, Harry H. Bell, her certain warranty deed whereby and whereby she did purport to convey to the said defendant, Harry H. Bell, the above described land; that said deed was thereafter filed for record and is recorded in book D-85 at page 90 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma; that said deed was thereafter refiled for record, and was re-recorded in book D-85 at page 139 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That on February 27th, 1913, said William J. Cook, as guardian of said Amos Francis and Elizabeth Francis, minors, executed and delivered to the defendant, Hoppy-Toad Oil and Gas Company of Muskogee, Oklahoma, a certain oil and gas lease wherein and whereby he did purport to lease and convey unto said defendant, the above described lands for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, of building tanks, stations and structures thereon to take care of said products; that a copy of said lease was filed for record and is recorded in book M-59 at page 369 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma.

That on or about the 5th day of April, 1913, the said defendants, H. L. Lightsey, John R. Taylor, R. C. Martin, H. M. Kirkpatrick and Thos. W. Daniel, executed and delivered to the defendant, A. W. Shulthis, a certain oil and gas mining lease wherein and whereby they did lease unto the said A. W. Shulthis the above described land for the purpose of operating and developing the same for oil and gas.

That the said defendant, A. W. Shulthis, is, and has been, since the commencement of this suit, in possession of that part of the above described lands as follows, to-wit:

The Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), Township Sixteen (16) North, Range Thirteen (13) East; and has drilled thereon four wells producing oil in paying quantities, and that the said A. W. Shulthis is converting said oil, and the proceeds therefrom, to his own use, without accounting to these defendants for their one-sixth interest therein.

That at or after the commencement of this suit the said plaintiff unlawfully and forcibly took possession of the remainder of the above described land, to-wit:

The East Half (E2) of the Southeast Quarter (SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), Township Sixteen (16) North, Range Thirteen (13) East; that since the commencement of this suit there have been drilled and completed on the lands immediately adjacent to the last above described lands, three oil and gas wells producing large quantities of oil and gas, and that by means of the production from said wells on said adjacent lands the oil in and under the last above described lands is being rapidly drained, and that said land is thereby being irreparably injured and damaged.

That the plaintiff herein claims to be the owner of all of said land as stated in her amended petition herein; that the above named defendants herein, under and by virtue of the deeds and leases executed to them, as hereinbefore set out, claim title to the above described lands, and to the oil and gas in and under the same; that the said plaintiff and the said defendants, Harry H. Bell, William H. Harris, L. A. Bell, the Hoppy-Toad Oil and Gas Company, J. A. Wood, H. P. Pierson and A. B. Miller, are without any right whatsoever, and have no right, estate, title or interest in or to the said lands, or any part thereof; that the deeds under which said defendants claim are void for the reason that the grantors therein had no right, title or interest in or to said lands at the time of the execution and delivery thereof; that said deeds and leases and the record thereof, constitute a cloud upon the title of these answering defendants in and to their interest in said land as herein set forth.

That the defendants, H. L. Lightsey, John V. McMahon, R. C. Martin, H. M. Kirkpatrick and Thos. W. Daniel, under

and by virtue of the conveyances and agreements hereinbefore set out are the owners of an undivided one-sixth interest in and to said land; that the defendant, A. W. Shulthis, under and by virtue of the oil and gas lease to him hereinbefore set out, as a valid oil and gas lease, owns an undivided five-sixths interest in said land.

In consideration whereof, and to the end therefore that the plaintiff and the defendants herein may, if they can, show why these answering defendants should not have the relief herein prayed and may make full disclosure and discovery of all the matters aforesaid, and to the best of their knowledge, information and belief, full, true and perfect answers make to the matters and things stated in this counter claim and cross demand of these answering defendants, these defendants pray:

First: That the said defendants and the plaintiff be allowed to set forth their right, title and interest, if any they have, in and to the above described land.

Second: That this Honorable Court, by proper decree herein adjudge that these answering defendants be the owners in fee of an undivided one-sixth interest in and to said lands, and that the said plaintiff and the said defendants, other than the defendants, H. L. Lightsey, John V. McMahon, R. C. Martin, H. M. Kirkpatrick and Thos. W. Daniel, have no right, valid claim, or any title in or to said lands, or any part thereof.

Third: That the title of these answering defendants to an undivided one-sixth interest in and to said lands be quieted, and that the plaintiff and defendants herein, other than those last above mentioned, be perpetually barred and enjoined from setting up or asserting any title or interest in said premises adverse to the one-sixth interest of these answering defendants.

Fourth: That the deeds and leases hereinabove mentioned, executed and recorded as hereinbefore set out, be declared void, and be delivered up to be canceled as clouds upon the title of these answering defendants.

Fifth: That to the end of securing to these answering defendants equitable relief in the premises, a receiver may be appointed of all of said lands, and of said oil and gas deposits in and under the same, with authority to enter upon said lands, and seize and take possession of the same, and of every part

thereof, and under the order and direction of this court, and for the due preservation and protection of the interest of the parties herein, prospect for oil and natural gas upon said land, and to sink, drill and bore oil and natural gas wells, and to take and extract from said lands the oil and gas in and under the same, and generally to do all things necessary and convenient to the protection of the right, title and interest of these defendants in and to said land, and to manage and hold said property, and all proceeds therefrom under the order and direction of this court, and subject to the further order of the court herein.

Sixth: That these defendants have such other and further relief in the premises to which in equity and good conscience they may be entitled.

FRANK F. LAMB,

Attorneys for defendants Frank F. Lamb, Eugene W. Gill and A. C. Brady.

State of Oklahoma, Okmulgee County.

Eugene W. Gill being first duly sworn on his oath states: that he is one of the defendants named in the foregoing answer; that he has read said answer, and knows the contents thereof, and that the allegations therein contained are true.

EUGENE W. GILL.

Subscribed and sworn to before me this the 8th day of December, 1913.

Atticus J. Gill,
Notary Public.

(Seal)

My Com. Exp. March 24, 1915.

Endorsed: Filed Dec. 16, 1913, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 5th day of January, A. D. 1914, the Defendant Gertrude Womack filed answer herein, which is in words and figures as follows:

Separate Answer of Gertrude Womack.

Comes now the defendant, Gertrude Womack, and for her separate answer to plaintiff's amended petition herein, says:

This defendant admits that plaintiff is a citizen of the Creek Nation enrolled on the Creek Indian Roll as Number

8304 and as a full-blood; that plaintiff was married to William Francis, a citizen of the Creek Nation enrolled on the Creek Indian Roll as Number 460 and as of the half-blood; that said William Francis died on or about April 6th, 1905; that there were born to plaintiff and her said husband, William Francis, a son, Freeland Francis, a daughter, Elizabeth Francis, and a son, Amos Francis; that said Freeland Francis was a citizen of the Creek Nation and enrolled on the Newborn Creek Indian Roll as Number 1070 and as of three-fourths blood; that to said Freeland Francis as such citizen of the Creek Nation there was duly allotted the following described lands, towit: The East Half of the South East Quarter and the South West Quarter of the South East Quarter of Section 25 and the South East Quarter of the South West Quarter of Section 26, all in Township 16 North, Range 13 East, in Okmulgee County, State of Oklahoma, and that on December 10th, 1908, a homestead deed and an allotment deed were issued therefor to said Freeland Francis; that said deeds were filed for record on March 30th, 1909, in the office of the Register of Deeds of Okmulgee County, Oklahoma; that true copies of said deeds are attached to plaintiff's petition, marked "Exhibit A" and "Exhibit B," respectively; that said Freeland Francis died on June 22nd, 1905, at his residence in what is now Okmulgee County, State of Oklahoma, intestate, unmarried and without issue; that no administration was ever had of his estate; that all the debts of said decedent, if any, have been fully paid and discharged; that there appear of record in the office of the Register of Deeds of Okmulgee County, Oklahoma, the seventeen alleged instruments named in plaintiff's petition at pages three and four thereof and purporting to convey interests or relating to interests in and to said lands; that said Freeland Francis left him surviving his mother, Annie Francis, who is the same person as Annie Harris, the plaintiff, but this defendant denies that said Annie Francis was his sole and only heir at law.

For further answer this defendant says that said William Francis for his first wife married one Silla Francis, a citizen of the Creek Nation; that to said William Francis and his wife, Silla, there was born only one child, a son, Mack Francis, who was enrolled on the Creek Indian roll on April 6th, 1899, as of the half blood and as ten years of age; that said Mack Francis reached his majority on April 6th, 1910; that said Silla Francis died many years ago, intestate, leaving her surviving her husband, William Francis, and her son said Mack Francis, as her sole and only heirs at law; that after the death of his first wife,

Silla Francis, said William Francis married Annie Francis, who is the plaintiff herein; that said William Francis died as herein set forth intestate, leaving him surviving his wife, said Annie Francis, and his children, said Mack Francis, Elizabeth Francis and Amos Francis, as his sole and only heirs at law; that said Freeland Francis died, as herein set forth, leaving him surviving as his sole and only heirs at law his mother, said Annie Francis, his brother, said Amos Francis, his sister, Elizabeth Francis and his half brother, said Mack Francis; that on the death of said Freeland Francis on June 22nd, 1905, an undivided one-sixth interest in and to said lands allotted to him descended to and vested in his said half brother, Mack Francis; that on April 9th, 1910, said Mack Francis, while the owner of and seized in his own right of an undivided one-sixth interest in and to said lands, bargained, sold and conveyed all of his right, title and interest therein to one Maude Mitchell, and on said day executed and delivered to said Maude Mitchell a warranty deed therefor, which deed was filed for record in the office of the Register of Deeds of Okmulgee County, Oklahoma, on April 13th, 1913, and therein recorded at page 595 of Book D-28 A. of the records of said office; that by virtue of said bargain and sale and the making and delivery of said deed, said Maude Mitchell became the owner of an undivided one-sixth interest in and to said lands.

That said Maude Mitchell died at her residence in Muskogee County, State of Oklahoma, on the 7th day of September, 1911, intestate, leaving her surviving as her sole and only heir at law her daughter, Gertrude Womack, this answering defendant, who was her only descendant; that on the death of said Maude Mitchell all her right, title and interest in and to said lands, to-wit: An undivided one-sixth interest, descended to and vested in this answering defendant and is now owned and held by her; that so far as is known by this answering defendant there has been no administration of the estate of said Maude Mitchell, but this answering defendant understands and believes that all the debts of said decedent have been paid.

For further answer this defendant denies all the allegations of said petition not hereinbefore expressly admitted or denied.

Wherefore, this defendant prays that the plaintiff may take nothing by this action as against said interest of this defendant hereinbefore set forth in and to said lands, and that this answering defendant may be decreed to have an undivided

one-sixth interest in fee in and to said lands free from any incumbrances, and that she may have such other and further relief to which she may be entitled. BELFORD & HIATT,
Attorneys for Defendant, Gertrude Womack.

State of Arkansas, Garland County—ss.

Gertrude Womack, being first duly sworn, on her oath states: that she is the defendant named in the foregoing answer; that she has read said answer, knows the contents thereof and that the allegations therein contained are true to the best of her knowledge and belief.

GERTRUDE WOMACK.

Sworn to before me and subscribed in my presence on this 3rd day of January, 1914. W. A. Mellard,
(Seal) Notary Public.

My commission expires Dec. 18th, 1917.

Endorsed: Filed Jan. 5, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 6th day of January, A. D. 1914, the Plaintiff filed Reply to the Answer of Eugene W. Gill, Frank F. Lamb and A. C. Brady and also answer to their cross petition, which is in words and figures as follows:

Reply to the Joint and Several Answer of Eugene W. Gill, Frank F. Lamb and A. C. Brady, and Also Answer to Their Said Cross-Petition.

Comes now the plaintiff and for her reply to the joint and several answer herein of Eugene W. Gill, Frank F. Lamb and A. C. Brady says that she denies each and every averment of fact therein set forth, except those averments therein set forth which, she, herself has alleged in her amended petition herein.

For her answer to the counter claim and cross demand of the said Eugene W. Gill, Frank F. Lamb and A. C. Brady, says that she denies each and every averment of fact therein set forth and contained, except those allegations therein set forth, which she, herself, has alleged in her amended petition herein.

Wherefore she renews the prayer of her amended petition herein, and prays the dismissal of said cross demand.

MERWINE & NEWHOUSE,
Attorneys for Plaintiff.

State of Oklahoma, Okmulgee County—ss.

Wellington L. Merwine being first duly sworn says that he is solicitor for plaintiff herein; that plaintiff is a non-resident of Okmulgee County, Oklahoma; and that the facts stated and allegations set forth in the foregoing reply and answer are true as he verily believes. WELLINGTON L. MERWINE.

Sworn to before me and subscribed in my presence on this 6th day of January, 1914. R. P. HARRISON, *Clerk.*
(Seal) By OTIS LORTON, *Deputy.*

My commission expires .....

Endorsed: Filed Jan. 6th, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 6th day of January, A. D. 1914, the Plaintiff filed Reply to the answer of A. W. Shulthis, E. J. Lambert, W. H Whitford and R. L. Ebling, and answer to their counter claim, which is in words and figures as follows:

Reply of Plaintiff to the Joint and Several Answer of A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling and Answer to Their Counter Claim.

Comes now the plaintiff and for her reply herein to the joint and several answer of the defendants A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling, and for her answer to the counter claim of the defendants last aforesaid, says that she denies each and every averment of fact set forth in said answer and counter claim, except those facts therein set forth, which she, herself, has heretofore alleged in her amended petition herein.

Wherefore she renews the prayer of her amended petition herein and prays that the counter claim of the defendants herein be dismissed at their costs.

MERWINE & NEWHOUSE,
Attorneys for Plaintiff.

State of Oklahoma, Okmulgee County—ss.

Wellington L. Merwine being first duly sworn says that he is attorney for the plaintiff herein; that plaintiff is a non-resident of Okmulgee County, Oklahoma, and that the facts stated and allegations set forth in the foregoing pleading are true as he verily believes. WELLINGTON L. MERWINE.

Sworn to before me and subscribed in my presence on this 6 day of January, 1914. R. P. HARRISON, *Clerk.*
(Seal) By OTIS LORTON, *Deputy.*
My commission expires .....

Endorsed: Filed Jan. 6th, A. D. 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 6th day of January, A. D. 1914, the Plaintiff filed Reply to the answer of Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor and answer to their counter claim, which is in words and figures as follows:

Reply to the Joint and Several Answer of Defendants, Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor, and Answer to Their Counter Claim and Cross Demand.

Comes now the plaintiff and for her reply to the joint and several answer of the defendants, Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor and for her answer to the counter claim and cross demand of said defendants says that she denies each and every allegation and averment of fact in said joint and separate answer and in said cross demand contained, except those allegations and averments set forth, which she, herself, has alleged in her amended petition herein.

Wherefore, she renews the prayer of her amended petition herein and prays this Honorable Court to dismiss the counter claim and cross demand of said defendants herein at their cost.

MERWINE & NEWHOUSE,
Attorneys for Plaintiff.

Endorsed: Filed Jan. 6, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 6th day of January, A. D. 1914, the Plaintiff filed Reply to the Answer of Harry H. Bell and an-

swer to counter claim and cross demand, which is in words and figures as follows:

Reply of Plaintiff to Separate Answer of Harry H. Bell, and Answer to Counter Claim and Cross Demand.

Comes now the plaintiff herein and for her reply to the separate answer of the defendant, Harry H. Bell, and for her answer to his counter claim and cross demand herein says that she denies each and every averment of fact set forth in each, except those averments and allegations of fact set forth and alleged in her amended petition herein.

Wherefore she renews the prayer of her amended petition and further prays that said counter claim and cross demand of the said Harry H. Bell herein be dismissed at his cost.

MERWINE & NEWHOUSE,
Attorneys for Plaintiff.

Endorsed: Filed Jan. 6, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 6th day of January, A. D. 1914, the plaintiff filed Reply to the Answer of Laura L. McGinnis, which is in words and figures as follows:

Reply of Plaintiff to the Answer of Laura L. McGinnis to Amended Petition.

Comes now the plaintiff and for her reply to the answer of Laura L. McGinnis says: That she denies each and every averment of fact in said answer set forth.

MERWINE & NEWHOUSE,
Attorneys for Plaintiff.

Endorsed: Filed Jan. 6, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 7th day of February, A. D. 1914, the defendants Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor filed answer to the counter claim and cross demand of defendant Harry H. Bell, which is in words and figures as follows:

Answer of Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor, to the Counter Claim and Cross Demand of Defendant, Harry H. Bell.

Come now the above named defendants, by their solicitors of record, and leave of court being first had and obtained, file this their answer hereto to the counter claim and cross demand of the defendant, Harry H. Bell, and thereupon allege and state:

That they deny that the said defendant, Harry H. Bell, is the owner in fee simple of an undivided one-half interest in the lands in controversy herein, and described in the amended petition herein, situated in Okmulgee County, State of Oklahoma, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4), and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East.

And these defendants deny that the said defendant, Harry H. Bell, has any right, title or interest in or to said lands, or any part thereof. These defendants admit that the plaintiff herein is a duly enrolled full blood Creek Indian, and that she was formerly legally married to one William Francis, and admit that the said William Francis was a duly enrolled citizen of the Creek Tribe of Indians enrolled as a three-quarter blood Indian. And defendants admit that on or about the 30th day of April, 1903, there was born to the said plaintiff and to the said William Francis, a son, Freeland Francis, who died on or about June 22nd, 1905, intestate, and without issue, within the limits of the Creek Nation, and within what is now Okmulgee County, Oklahoma, and defendants admit that the said Freeland Francis left surviving him, his mother, the plaintiff herein, a brother, Amos Francis, and a sister, Elizabeth Francis, children of the same mother and father, and a brother, Mack Francis, a son of the same father, but of a different mother. And defendants admit that the said Freeland Francis died without having selected the lands to which he was entitled as a citizen of the Creek Nation.

Defendants deny that thereafter, and on or about the 4th day of December, 1907, the heirs of the said Freeland Francis

selected the lands in controversy herein as the allotment to which the said Freeland Francis would have been entitled if living, but defendants allege and state that on or about the 4th day of December, 1907, the Commissioner to the Five Civilized Tribes, under the Acts of Congress then in force and effective, arbitrarily segregated said lands from the public domain of the Creek Nation, and that said lands were allotted by the said Commissioner in the name of the said Freeland Francis, deceased. Defendants admit that patents to said lands were duly issued thereafter, and on the 10th day of December, 1908, and defendants admit that by such patents the title to said lands was conveyed to the heirs of the said Freeland Francis, deceased, and admit that said patents were duly recorded in the office of the Commissioner to the Five Civilized Tribes, and admit that the plaintiff, by virtue of said patents, became the owner of an undivided one-half interest in said lands. Defendants deny, that on February 27th, 1913, the plaintiff, Annie Francis, for a valuable consideration, to-wit: the sum of Two Hundred Twenty-five ($225.00) Dollars, conveyed to the said defendant, Harry H. Bell, any interest whatsoever in said lands. Defendants admit that on February 27th, 1913, the plaintiff executed and delivered to the said defendant, Harry H. Bell, her warranty deed, whereby she did purport to convey the above described lands to the said Harry H. Bell, but defendants allege and state that said deed is null and void for the reason that at the time of the execution and delivery of said deed the said plaintiff had no right, title or interest whatsoever in or to said lands, or any part thereof. Defendants deny that immediately after February 27th, 1913, the said defendant, Harry H. Bell, entered into possession of said lands, and deny that the said Harry H. Bell was in the actual possession thereof at the time of the institution of this suit.

These defendants admit that they claim an interest and estate in said lands, and admit that they claim said interest by virtue of a deed executed by the plaintiff to Laura L. McGinnis on January 15th, 1908, recorded in the office of the Register of Deeds of Okmulgee County, Oklahoma, in Book D-6-A at page 8, and defendants allege and state that the said deed was, on or about July 6th, 1910, duly approved by the First Assistant Secretary of the Interior, and defendants allege and state that a true and correct copy of said deed, together with endorsement of approval thereon by the First Assistant Secretary of the Interior, is attached to, and set out as a part of, the counter

claim and cross demand of these defendants herein. Defendants admit that the said Laura L. McGinnis did, on or about the 8th day of January, 1909, convey her interest in said land to the defendant, H. L. Lightsey and John R. Taylor, which said deed is recorded in Book D-17-A at page 392 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma, and defendants admit that thereafter, and on the 12th day of March, 1913, the defendants, H. L. Lightsey and John R. Taylor, executed and delivered to the defendants, R. C. Martin, H. M. Kirkpatrick and Thos. W. Daniel, their certain conveyance conveying an interest in said land, which said conveyance was recorded in the office of the Register of Deeds of Okmulgee County, Oklahoma, in Book M-87 at page 467, and defendants admit that thereafter, and on or about July 7th, 1913, the defendant, John R. Taylor, executed and delivered to the defendant, John V. McMahon, a quit claim deed, conveying his interest to the lands in controversy, which deed is recorded in the records in the office of the Register of Deeds of Okmulgee County in Book M-77 at page 333, and these defendants affirmatively allege and state that under and by virtue of the aforesaid conveyances, these defendants are seized and possessed of all the right, title and interest of the plaintiff derived by her under and by virtue of the patents issued as aforesaid, and deny that any of said deeds are void, and deny that at the time of the execution of the same, the grantors therein had no legal right to convey, and deny that any of said conveyances were executed without consideration, but allege and state that the same were executed for a good and valuable consideration. Defendants deny that since the 27th day of February the said defendant, Harry H. Bell, has been in the actual possession of the lands in controversy herein, and deny that the deeds and conveyances hereinbefore mentioned are void and champertous, and deny that they, or any of them, were given at a time when the said defendant, Harry H. Bell, was in the actual possession of the lands in controversy, and at a time when neither the said grantees nor their grantors had been in possession of said land for a period of one year, or had taken the rents and profits thereof for a period of one year.

Wherefore, these defendants pray that said defendant take nothing by his cross petition herein, and that the same be dismissed as to them.

R. C. MARTIN,
H. M. KIRKPATRICK,
Attorneys for said Defendants.

Endorsed: Filed Feb. 7, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 7th day of February, A. D. 1914, the defendants A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling filed answer to the counter claim and cross demand of defendant Harry H. Bell, which is in words and figures as follows:

Answer of A. W. Shulthis, W. H. Whitford, E. J. Lambert and R. L. Ebling, to the Counter Claim and Cross Demand of Defendant, Harry H. Bell.

Come now the above named defendants, by their solicitors of record, and leave of court being first had and obtained, file this their answer hereto to the counter claim and cross demand of the defendant, Harry H. Bell, and thereupon allege and state:

That they deny that the said defendant, Harry H. Bell, is the owner in fee simple of an undivided one-half interest in the lands in controversy herein, and described in the amended petition herein, situated in Okmulgee County, State of Oklahoma, to-wit:

> The East Half (E2) of the Southeast Quarter (SE4), and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25), and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East.

And these defendants deny that the said defendant, Harry H. Bell, has any right, title or interest in or to said lands, or any part thereof. These defendants admit that the plaintiff herein is a duly enrolled full blood Creek Indian, and that she was formerly legally married to one William Francis, and admit that the said William Francis was a duly enrolled citizen of the Creek Tribe of Indians enrolled as a three-quarter blood Indian. And defendants admit that on or about the 30th day of April, 1903, there was born to the said plaintiff and to the said William Francis, a son, Freeland Francis, who died on or about June 22nd, 1905, intestate, and without issue, within the

limits of the Creek Nation, and within what is now Okmulgee County, Oklahoma, and defendants admit that the said Freeland Francis left surviving him, his mother the plaintiff herein, a brother, Amos Francis, and a sister, Elizabeth Francis, children of the same mother and father, and a brother, Mack Francis, a son of the same father, but of a different mother. And defendants admit that the said Freeland Francis died without having selected the lands to which he was entitled as a citizen of the Creek Nation.

Defendants deny that thereafter, and on or about the 4th day of December, 1907, the heirs of the said Freeland Francis selected the lands in controversy herein as the allotment to which the said Freeland Francis would have been entitled if living, but defendants allege and state that on or about the 4th day of December, 1907, the Commissioner to the Five Civilized Tribes, under the Acts of Congress then in force and effective, arbitrarily segregated said lands from the public domain of the Creek Nation, and that said lands were allotted by the said Commissioner in the name of the said Freeland Francis, deceased. Defendants admit that patents to said lands were duly issued thereafter, and on the 10th day of December, 1908, and defendants admit that by such patents the title to said lands was c o n v e y e d to the h e i r s of the said Freeland Francis, deceased, and admit that said patents were duly recorded in the office of the Commissioner to the Five Civilized Tribes, and admit that the plaintiff, by virtue of said patents, became the owner of an undivided one-half interest in said lands. Defendants deny, that on February 27th, 1913, the plaintiff, Annie Francis, for a valuable consideration, to-wit: the sum of Two Hundred Twenty-five ($225.00) Dollars, conveyed to the said defendant, Harry H. Bell, any interest whatsoever in said lands. Defendants admit that on February 27th, 1913, the plaintiff executed and delivered to the said defendant, Harry H. Bell, her warranty deed, whereby she did purport to convey the above described lands to the said Harry H. Bell, but defendants allege and state that said deed is null and void for the reason that at the time of the execution and delivery of said deed the said plaintiff had no right, title or interest whatsoever in or to said lands, or any part thereof. Defendants deny that immediately after February 27th, 1913, the said defendant, Harry H. Bell, entered into possession of said lands, and deny that the said Harry H. Bell was in the actual possession thereof at the time of the institution of this suit.

These defendants admit that they claim an interest and estate in said lands, and admit that they claim said interest by virtue of a deed executed by the plaintiff to Laura L. McGinnis on January 15th, 1908, recorded in the office of the Register of Deeds of Okmulgee County, Oklahoma, in Book D-6-A at page 8, and defendants allege and state that the said deed was, on or about July 6th, 1910, duly approved by the First Assistant Secretary of the Interior, and defendants allege and state that a true and correct copy of said deed, together with endorsement of approval thereon by the First Assistant Secretary of the Interior, is attached to, and set out as a part of, the counter claim and cross demand of these defendants herein. Defendants admit that the said Laura L. McGinnis did, on or about the 8th day of January, 1909, convey her interest in said land to the defendant, H. L. Lightsey and John R. Taylor, which said deed is recorded in Book D-17-A at page 392 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma, and defendants admit that thereafter, and on the 12th day of March, 1913, the defendants, H. L. Lightsey and John R. Taylor, executed and delivered to the defendants, R. C. Martin, H. M. Kirkpatrick and Thos. W. Daniel, their certain conveyance conveying an interest in said land, which said conveyance was recorded in the office of the Register of Deeds of Okmulgee County, Oklahoma, in Book M-87 at page 467, and defendants admit that thereafter, and on or about July 7th, 1913, the defendant, John R. Taylor, executed and delivered to the defendant, John V. McMahon, a quit claim deed, conveying his interest in the lands in controversy, which deed is recorded in the records in the office of the Register of Deeds of Okmulgee County in Book M-77 at page 333, and these defendants affirmatively allege and state that under and by virtue of the aforesaid conveyances, the said defendants, H. L. Lightsey, John R. Taylor, Thos. W. Daniel, H. M. Kirkpatrick and John V. McMahon, became seized in fee and possessed of all the right, title and interest of the plaintiff derived by her under and by virtue of the patents issued as aforesaid.

These answering defendants further admit that they are the lessee of a certain oil and gas lease covering said land; that said lease was executed April 5th, 1913, by the said H. L. Lightsey, John R. Taylor, R. C. Martin, H. M. Kirkpatrick and Thos. W. Daniel; that said lease was filed for record on the 23rd day of April, and is recorded in Book M-84 at page 146 of the records in the office of the Register of Deeds of Okmulgee County, Oklahoma; that under and by virtue of said lease, the lessee

therein was granted and demised and let the said lands for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and of building tanks, powers, stations, buildings and structures thereon, to produce, refine and otherwise prepare and take care of said production, and defendants allege that under and by virtue of said oil and gas lease, the said defendant, A. W. Shulthis, his successors and assigns, acquired the full and exclusive right to operate and develop said lands for oil and gas. Defendants further allege that on or about the 12th day of April, 1913, the said defendant, A. W. Shulthis, executed and delivered an agreement for the assignment of a certain interest in said oil and gas mining lease to the defendants herein, E. J. Lambert, W. H. Whitford and R. L. Ebling, but these defendants allege that heretofore, and subsequent to the execution of said agreement, the same was canceled, annuled and rescinded, and that defendants, E. J. Lambert, W. H. Whitford and R. L. Ebling, have and claim no right, title or interest in or to said land, or in or to the oil and gas in or under the same; that the said defendant, A. W. Shulthis, is the sole holder and owner of said lease. These defendants deny that any of the above mentioned deeds, or the said lease, are void, and deny that at the time of the execution of the same the grantors therein had no legal right to convey, and deny that any of said conveyances were executed without consideration, but allege that the same, and each of them, were executed for a good and valuable consideration.

Defendants deny that at the time of the execution of said lease the said defendant, Harry H. Bell, was, or had been, in the actual possession of the lands in controversy herein, and deny that the said lease was made and executed when the said land was in litigation, and deny that the said lease was made, or the said deeds were made, at a time when the said defendant, Harry H. Bell, was in actual possession of the lands in controversy, and at a time when neither the said grantees nor lessees, nor their grantors had been in possession of said land for a period of one year, or had taken the rents and profits thereof for a period of one year, and defendants deny that the said deeds and conveyances, or the said lease, or any one or more of them, are void and champertous.

Wherefore, these defendants pray that said defendant take nothing by his cross petition herein, and that the same be dismissed as to them.

GEO. S. RAMSEY,
C. L. THOMAS,
Solicitors for said Defendants.

Endorsed: Filed Feb. 7, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 2nd day of March, A. D. 1914, the Plaintiff filed Reply to the Answer of Gertrude Womack, which is in words and figures as follows:

Reply to Separate Answer of Gertrude Womack.

Comes now the plaintiff and for her reply to the separate answer of Gertrude Womack herein says that she denies each and every allegation therein contained not heretofore alleged in her petition herein, and she realleges the allegations in her petition.

Wherefore she renews the prayer of her petition.

MERWINE & NEWHOUSE,
Attorneys for Plaintiff.

Endorsed: Filed Mar. 2, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 17th day of February, A. D. 1915, the same being one of the days of the regular Muskogee, 1915, term of the United States District Court for the Eastern District of Oklahoma, court met pursuant to adjournment at Muskogee, Oklahoma. Present and presiding the Honorable RALPH E. CAMPBELL, Judge.

Among the proceedings had on this day is the following:

Order Appointing Guardian *Ad Litem*.

Now on this day it appearing to the court that from representations made to him by William Matthews, Esq., attorney for A. W. Shulthis and other defendants herein, that two of the defendants herein, to-wit, Amos Francis and Elizabeth Francis, are minors, and that no guardian *ad litem* has been appointed by this court to represent them in this cause, and that their right and title to the land in controversy is necessarily involved in the determination of this cause.

It is, therefore, by the court ordered that W. C. Franklin, Esq., a practicing attorney and member of the bar of this

court, be, and he is, hereby appointed guardian *ad litem* for the said named minor defendants, Amos Francis and Elizabeth Francis and is directed to file an answer as such guardian *ad litem* for said minor defendants herein within ten days from and after this date.

And it further appearing to the court that the issues in this cause have not been fully made up, the cause is hereby stricken from the trial assignment of this court.

RALPH E. CAMPBELL, *Judge.*

And, to-wit, on the 1st day of March, A. D. 1915, the defendants Amos Francis and Elizabeth Francis by their guardian *ad litem* filed answer herein, which is in words and figures as follows:

Answer of Defendants Amos Francis and Elizabeth Francis by Guardian *Ad Litem.*

Paragraph I.

Comes now the defendants Amos Francis and Elizabeth Francis by their duly appointed guardian *ad litem*, W. C. Franklin, and for answer to the amended petition of the plaintiff herein, allege and state:

That they admit that the plaintiff is a duly enrolled full blood member of the Creek Tribe of Indians, and that she married William Francis, who was duly enrolled member of the Creek Tribe of Indians, and his name appeared upon the approved roll of citizens of said tribe of Indians opposite roll number 460.

That there was born to the said plaintiff and the said William Francis, a son, Freeland Francis and these defendants. That the said Freeland Francis was enrolled upon the enrollment records of said Creek Tribe of Indians opposite roll number 1070, and that there was allotted to him for his portion of the lands of said tribe, the real estate described in plaintiff's amended petition, and that homestead and allotment deeds were issued therefor and that the same was duly filed for record on the 30th day of March, 1909, as set forth in plaintiff's said amended petition.

These defendants also admit that the said Freeland Francis died during the year 1905 and subsequent to the death of

his father William Francis, and these defendants deny that at the time of the death of the said Freeland Francis, he left surviving him as his sole and only heir the plaintiff herein, and deny that the plaintiff became the owner of said lands so allotted to the deceased, Freeland Francis, and that she is now the owner in fee simple thereof; and deny that no administration was ever had of said estate.

But these defendants allege and state that upon the death of the said Freeland Francis, he left surviving him as his sole and only heirs at law, the plaintiff herein, who inherited one-half of said estate, and these defendants each of whom inherited a one-fourth interest in said estate, and are now the owners in fee simple of a one-fourth interest each, of the lands described in plaintiff's amended petition, and allotted and patented to the heirs of the said Freeland Francis.

These defendants deny that their interests in said land were ever sold by the guardian of these defendants under order of the probate court of Okmulgee County as alleged and set forth in plaintiff's amended petition; and allege and state that said lands were and are restricted and that said guardian is, and was at all times heretofore mentioned without authority to sell the interests of these defendants in said land; and that said probate court of Okmulgee County, is and at all times hereinbefore mentioned was without authority to order the said sale of said lands by the guardian or to confirm the same. And denies that a deed was executed by the guardian of these defendants and delivered to H. L. Lightsey and John R. Taylor, as alleged and set forth in plaintiff's amended petition.

These defendants admit that on or about the 27th day of February, 1913, W. J. Cook, as guardian of these defendants filed his petition in the County Court of Okmulgee County, Oklahoma, alleging that these defendants had an interest in the allotment of the said Freeland Francis deceased, and asking that he be authorized to lease said estate for oil and gas mining purposes; and that upon said day such proceedings were had, under said petition and application, that order was made and entered upon the journals of said court, confirming the sale of an oil and gas mining lease to the Hoppy-Toad Oil and Gas Mining Company, and authorizing and directing the said guardian to execute and make said oil and gas mining lease to the said Hoppy-Toad Oil and Gas Mining Company; and admits that on said date the said guardian did acknowledge and deliver to the said Hoppy-Toad Oil and Gas Mining Com-

pany an oil and gas mining lease on said real estate, and that said lease was duly recorded with the Register of Deeds of Okmulgee County, Oklahoma, as set forth in plaintiff's amended petition; and that the order confirming said sale was duly recorded by the Register of Deeds of Okmulgee County, as set forth in said amended petition;

And these defendants deny the allegations of said amended petition that these defendants had no title or interest in said land, and deny that said court was without jurisdiction to order and direct the sale thereof, for oil and gas purposes, or that said guardian was without the power or authority to make and deliver an oil and gas mining lease thereon. And deny that the execution and delivery of the said lease and the approval of the same by the County Court was void and of no effect, and deny that same *is* clouds upon the plaintiff's title.

Paragraph II.

Comes now Amos Francis and Elizabeth Francis by their duly appointed guardian *ad litem* W. C. Franklin and for answer to the cross petition of the defendants, *W. H.* Shulthis, W. H. Whitford, E. J. Lambert, and R. L. Ebling, allege and say:

These answering defendants admit that Freeland Francis was a duly enrolled Creek Indian of three-fourths blood and that he was enrolled on the rolls of the Creek Nation as a new born Creek Indian and that the said Freeland Francis, died on or about the 22nd day of June, 1905, unmarried and without issue, and that the father of the said Freeland Francis was William Francis, who died on or about the 6th day of April, 1905, and that the said Freeland Francis left surviving him his mother Annie Francis, the plaintiff herein, and these answering defendants Amos Francis, a brother and Elizabeth Francis a sister;

And admit that these answering defendants are minors and under the age of twenty-one years, and that these answering defendants and the plaintiff Annie Francis are all duly enrolled full-blood citizens of the Creek Nation; that there was allotted by the Commission of the Five Civilized Tribes, as a portion of the lands of the Creek Nation, to which the said Freeland Francis was entitled, the lands described and set up in plaintiff's petition and in the cross petition of these defendants. And that patents were issued to said lands by the United States of America, and the Creek Nation, on the 10th

day of December, 1908, and that these answering defendants, Amos Francis and Elizabeth Francis, and the plaintiff, Annie Francis, were the sole heirs at law of the said Freeland Francis, deceased, as such became the owners in fee of the said lands, upon the execution and delivery of the said patents.

These answering defendants admit that Wm. J. Cook is their duly appointed, qualified and acting guardian, but deny that this guardian sold all the right, title and interest of these answering defendants in and to the lands allotted to them by virtue of their being the heirs of the said Freeland Francis, and deny that the said guardian did execute and deliver to the said H. L. Lightsey and John R. Taylor, his guardian's deed conveying to the purchasers all the right, title and interest of these defendants to said real estate, and deny that the said H. L. Lightsey and John R. Taylor are now the owners of the interest inherited by these defendants by virtue of their being heirs of the said Freeland Francis.

These answering defendants deny that A. W. Shulthis has full and exclusive right to enter upon said land and operate and develop same for oil and gas purposes.

Paragraph III.

Comes now the defendants Amos Francis and Elizabeth Francis by their duly appointed guardian *ad litem* W. C. Franklin, and for their answer to the cross petition of defendants Eugene W. Gill, Frank F. Lamb and A. C. Brady, allege and state:

These answering defendants deny that the said Frank F. Lamb, Eugene W. Gill, and A. C. Brady are the owners in fee simple of the undivided one-sixth interest in the lands involved herein and described in said cross petition.

These answering defendants admit that William Francis was a duly enrolled mixed-blood citizen of the Creek Nation, but deny that he was ever married to one Silla Francis.

These answering defendants admit that William Francis, died on or about the 6th day of April, 1905, but deny that Mack Francis was a son of William Francis.

These answering defendants admit that the said William Francis married the plaintiff herein Annie Harris, *nee* Francis, and that there was born to them a son, Freeland Francis, and a daughter Elizabeth Francis, and also allege that there was born to them, the said William Francis, and Annie Fran-

cis, a son Amos Francis, and admit that the said Amos Francis and Elizabeth Francis are now living; and deny that the said Mack Francis was an heir or had any interest in the lands described in plaintiff's amended petition.

For further answer, these answering defendants admit that the said Freeland Francis was enrolled upon the enrollment records of the Creek Tribe of Indians opposite roll number 1070, as a new born Indian of three-fourths Indian blood, and that the lands described in cross petition and in plaintiff's amended petition were allotted as a portion of the land to which the said Freeland Francis was entitled as a citizen of the Creek Nation, and that patents were issued by the United States of America and the Creek Nation as set forth in said cross petition, and plaintiff's amended petition.

These answering defendants deny that the said Frank F. Lamb, Eugene W. Gill and A. C. Brady became the owners in fee simple of the undivided one-sixth interest in and to said lands by virtue of any conveyance executed by Mack Francis.

These answering defendants also admit that W. J. Cook is their duly appointed, qualified and acting guardian but deny that said guardian ever sold the interest of these defendants in the lands described in said amended petition and cross petition, as alleged and set forth in said cross petition; and deny that said guardian ever executed to the defendants H. L. Lightsey and John R. Taylor his guardian's deed as alleged and set forth in said cross petition.

These answering defendants admit that on or about the 27th day of February, 1913, this said guardian Wm. J. Cook executed and delivered to the defendant Hoppy-Toad Oil and Gas Co. a certain oil and gas mining lease, conve[y]ing to said company the interests of these defendants in said lands for the purpose of mining and operating for oil and gas; and deny that the defendants H. L. Lightsey and John V. McMahon, R. C. Martin, H. M. Kirkpatrick, Thomas W. Daniel and A. W. Shulthis or either of said defendants are the owner of any interest in said lands.

Paragraph IV.

Comes now the defendants Amos Francis and Elizabeth Francis by their duly appointed guardian *ad litem* W. C. Franklin and for answer to the cross petition of defendants Thomas W. Daniels, R. C. Martin, H. M. Kirkpatrick, John V.

McMahon, H. L. Lightsey and John R. Taylor, allege and state:

That these answering defendants deny that the said cross petitioners are owners in fee simple of the lands involved herein and described in said petition.

These answering defendants admit that the plaintiff Annie Francis is a duly enrolled full blood citizen of the Creek Nation, and that prior to April 30th, 1903, she was legally married to William Francis, and that the said William Francis was a duly enrolled Indian citizen of the Creek Nation; and that there was born to the said William Francis and Annie Francis a son, Freeland Francis; and admit that the said William Francis died on or about the 6th day of April, 1905, and that the said Freeland Francis died on or about the 22nd day of June, 1905, intestate and unmarried and without issue, and that the said Freeland Francis left surviving him his mother Annie Francis, also these answering defendants Amos Francis a brother, and Elizabeth Francis, a sister, and that these answering defendants are minors; and admit that the said plaintiff and these answering defendants were the sole heirs at law of the said Freeland Francis; and admit that the said Freeland Francis was a duly enrolled new born Creek Indian as alleged and set forth in said cross petition; and admit that these answering defendants were duly enrolled citizens of the Creek Nation as full Indian blood; and admit that the lands described in cross petition were allotted to the heirs of the said Freeland Francis as his portion and share of the lands of the said Creek Nation, and that patents therefor were issued as set forth in said cross petition.

These answering defendants admit that Wm. J. Cook is their duly appointed, qualified and acting guardian, but deny that this said guardian Wm. J. Cook ever sold the interest of the answering defendants in the said lands to the defendants H. L. Lightsey and John R. Taylor, as alleged and set forth in said cross petition. And deny that this said guardian executed and delivered to the said defendants H. L. Lightsey and John R. Taylor full proper conveyances or any conveyances of all the interest or any of the interest of said minors in and to said real estate.

These answering defendants also admit that the said William J. Cook on or about the 27th day of February, 1913, executed and delivered to the defendant Hoppy-Toad Oil and Gas Company an oil and gas lease, conveying to the said defendant

Hoppy-Toad Oil and Gas Company an interest of these answering defendants in said lands for oil and gas purposes.

Paragraph V.

Comes now the defendants Amos Francis and Elizabeth Francis by their duly appointed guardian *ad litem* W. C. Franklin and for answer to the defendant Harry H. Bell alleges and states:

These answering defendants admit that the plaintiff Annie Francis is a duly enrolled full-blood Creek Indian, and that she was formerly the wife of one William Francis, and that the said William Francis was a duly enrolled citizen of the Creek Tribe of Indians, enrolled as a three fourths-blood Indian, and that there was born to the said plaintiff and to the said William Francis a son Freeland Francis, who died on or about the 22nd day of June, 1905, intestate and without issue, in what is now Okmulgee County, Oklahoma, and that the said Freeland Francis upon his death left surviving him his mother Annie Francis, the plaintiff herein, and these answering defendants Amos Francis a brother and Elizabeth Francis, a sister.

But deny that he left surviving mother Mack Francis; and admit that the said Freeland Francis died without having selected the lands to which he was entitled as a citizen of the Creek Nation, and admit that there was allotted and patented to the heirs of the said Freeland Francis the lands described in said cross petition as alleged in said cross petition.

For further answer, these answering defendants deny each and every further allegation in said cross petition adverse to these defendants.

Paragraph VI.

Wherefore, these defendants having made full and complete answer to the allegations contained in the amended petition of the plaintiff and to the answer and cross petition of the defendants herein, so far as material to these answering defendants, pray that the plaintiff and the said defendants take nothing by reason of the amended petition of said plaintiff and the cross petition of said defendants, and that the said cause be dismissed as to these answering defendants and that these defendants have their costs herein incurred, and such further and general relief as they may be entitled to in good conscience.

Paragraph VII.

Comes now the defendants Amos Francis and Elizabeth Francis, by their duly appointed guardian *ad litem* W. C. Franklin, and for further answer to the amended petition herein and for their counter claim and cross complaint against the plaintiff Annie Harris, formerly Annie Francis, and against the co-defendants Harry H. Bell, J. A. Wood, H. R. Pierson, A. C. Brady, Frank F. Lamb, A. B. Miller, Maud Mitchell, W. H. Harris, L. A. Bell, H. L. Lightsey, John R. Taylor, Mack Francis, J. Orlando Mitchell, Howell H. Brown, Thomas W. Daniel, Turner L. McGinnis, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, A. W. Shulthis, E. J. Lambert, W. H. Whitford, R. L. Ebling, Gertrude Womack, Harry F. Eagin, Eugene W. Gill and the Hoppy-Toad Oil and Gas Company, a corporation, allege and state:

That these answering defendants are minors and that they are duly enrolled citizens of the Creek Nation, their names appearing upon the approved roll of citizens of said nation as full blood citizens opposite roll numbers ..... and ..... respectively,

That these answering defendants are the children of Annie Francis, the plaintiff herein, and William Francis, her husband.

That the said Annie Francis is a duly enrolled full-blood citizen of the Creek Nation, her name appearing on the approved roll of the citizens of the Creek Nation, opposite roll number 8304.

That the said William Francis was an enrolled member of the Creek Nation and his name appears upon the approved roll of citizens of said nation opposite roll number 460.

That to the said William Francis and Annie Francis, were born three children—these answering defendants Amos Francis and Elizabeth Francis, and a son Freeland Francis.

That the said Freeland Francis was a duly enrolled citizen of the Creek Nation whose name appears on the approved roll of new born Creek Indian citizens, opposite roll number 1070, as a three-quarter blood Creek Indian.

That on or about the 6th day of April, 1905, the said William Francis died; that on or about the 22nd day of June, 1905, the said Freeland Francis died, at which time he was a minor, unmarried and without issue.

That subsequently W. J. Cook was appointed administrator of the estate of the said Freeland Francis by the United States Court for the Western District of the Indian Territory, at Muskogee; and that said administration proceedings are now pending in the County Court of Muskogee County, State of Oklahoma.

That subsequent to the appointing of the said W. J. Cook as administrator of the estate, the said administrator on or about the 14th day of December, 1907, made selection for the allotment for the estate of the said Freeland Francis, deceased, and there was allotted by the Commissioner of the Five Civilized Tribes, as a portion of the lands of the said tribe to which the said Freeland Francis would have been entitled if living, the real estate described in the amended petition of plaintiff, to-wit:

> The East Half of the Southeast Quarter (E2 of SE4) and the Southwest Quarter (SW4) of the Southeast Quarter (SE4) of Section Twenty-five (25) Township Sixteen North, Range Thirteen East; and the Southeast Quarter (SE4) of the Southwest Quarter (SW4) of Section Twenty-six (26) all in Township Sixteen (16) North, Range (13) East of the Indian Base and Meridian in what is now Okmulgee County, State of Oklahoma,

and that thereafter and on or about the 10th day of December, 1908, patents covering said land were duly issued to the said heirs and filed for record as alleged in said amended petition.

That these answering defendants and the said Freeland Francis were the only children born to the said Annie Francis, and William Francis or either of them and that upon the death of the said Freeland Francis, he left surviving him as his sole and only heirs at law, Annie Francis, his mother, and these answering defendants his brother and sister; all of whom were duly enrolled citizens of the Creek Nation.

That on or about the 10th day of March, 1907, William J. Cook was appointed guardian of the estate of the answering defendants by the United States District Court for the Western District of Indian Territory at Muskogee and that said William J. Cook is now the duly appointed, qualified and acting guardian of the estate of the answering defendants; and that said guardianship is now pending in the County Court of Okmulgee County, in the State of Oklahoma.

That these answering defendants as heirs of the said Freeland Francis are the owners in fee simple each of an undivided one-fourth interest in and to the lands hereinbefore described as allotted and patented to the said Freeland Francis.

That since the death of the said Freeland Francis, the following purported instruments of conveyance and purported instruments of and covering said real estate as allotted to him appear of record in the office of the Register of Deeds of Okmulgee County, State of Oklahoma, to-wit:

1. A warranty deed from the said Annie Francis to the defendant Laura McGinnis, executed on the 15th day of January, 1908, and filed for record in the 18th day of January, 1908, and recorded in Book D-6-A at page 6 of said records.

2. A warranty deed from the said Annie Francis to the defendant J. A. Wood, executed on the 17th day of October, 1908, and filed for record on the 22nd day of October, 1908, and recorded in Book D-17-A at page 205 of said records.

3. A warranty deed from the said Annie Francis to the defendant H. R. Pierson, executed on the 8th day of December, 1908, and filed for record on the same day recorded in book D-17-A at page 303 of said records.

4. A warranty deed from the said Laura L. McGinnis and her husband, to the defendants H. L. Lightsey and John R. Taylor, executed on the 8th day of January, 1909, and filed for record on the 21st day of the same month, and recorded in Book D-17-A at page 392 of said records.

5. A warranty deed from the defendant Mack Francis to the defendants A. C. Brady and Frank F. Lamb, executed on the 9th day of November, 1909, and filed for record on the same day, and recorded in Book D-27-A, at page 260 of said records.

6. A warranty deed from the said Mack Francis to the defendant Maude Mitchell, executed on the 10th day of March, 1910, and filed for record on the next day and recorded in Book D-28-A at page 525 of said records.

7. A warranty deed from the said Mack Francis to the defendant A. B. Miller executed on the 9th day of March, 1910, and filed for record on the next day and recorded in Book D-28-A at page 521 of said records.

8. A warranty deed from the said Mack Francis to the defendants W. H. Harris and L. A. Bell executed on the 13th day of April, 1910, and filed for record on the 15th day of said month, and recorded in Book D-28-A at page 599 of said records.

9. A warranty deed from the said Mack Francis to the defendants H. L. Lightsey and John R. Taylor executed on the 5th day of January, 1912, and filed for record on the same day and recorded in Book D-39-A at page 481 of said records.

10. A warranty deed from the said J. Orlando Mitchell to the defendant, Howell H. Brown, executed on the 1st day of May, 1912, and filed for record on the third day of the same month and recorded in Book D-39-A at page 588 of said records.

11. A certain agreement by and between the defendants H. L. Lightsey and John R. Taylor, of the one part and the defendants R. C. Martin and H. M. Kirkpatrick of the other part, executed on the 12th day of March, 1913, and recorded in Book M-83 at page 467 of said records.

12. A certain quit claim deed from the defendant J. R. Taylor to the defendant John V. McMahon executed on the 7th day of April, 1913, and filed for record on the 31st day of May, 1913, and recorded in Book M-77 at page 333 of said records.

13. A certain oil and gas mining lease made by the defendant lessors H. L. Lightsey, J. R. Taylor, R. C. Martin, H. M. Kirkpatrick, and Thomas W. Daniel to the defendant lessee, A. W. Shulthis, on the 5th day of April, 1913, and filed for record on the 23rd day of the same month and recorded in Book M-84 at page 146 of said records.

14. A certain agreement for the assignment of a certain interest in said oil and gas mining lease by the said A. W. Shulthis to the defendants E. J. Lambert, W. H. Whitford, and R. L. Ebling executed on the 12th day of April, 1913, and filed for record on the 15th day of the same month and recorded in Book M-87 at page 41 of said records.

15. A certain agreement of and concerning said real estate made by and between the defendant J. R. Taylor, and the defendant John V. McMahon, on the 7th day of

April, 1913, and filed for record on the next day and recorded in Book M-83 at page 572 of said records.

16. A certain warranty deed from the defendant, Howell H. Brown, and his wife to the defendant Harry F. Eagan, executed on the 5th day of October, 1912, and filed for record on the 1st day of May, 1913, and recorded in Book D-76 at page 263 of said records.

17. A certain quit claim deed from the said Harry F. Eagan to the defendant Eugene W. Gill executed on the 9th day of May, 1913, and filed for record on the 15th day of May, 1913, and recorded in Book M-77 at page 307 of said records.

That each and all of the above described instruments are void and of no force or effect; and that at the time of the execution of the instrument above described as executed by the said Annie Francis said lands were restricted and inalienable, and the said Annie Francis had no authority to convey said premises and that said lands are at this time, and at all times hereinbefore mentioned were restricted and inalienable.

These answering defendants further state that Mack Francis as grantor mentioned in certain of the above described instruments did not at any time hereinbefore mentioned or at the time of the said conveyances have any right, title or interest in and to said premises as the heirs of the said Freeland Francis, or otherwise. And that the grantees in said conveyances from the said Annie Francis and Mack Francis or those claiming under said grantees acquired no right, title or interest in and to said premises by reason of said conveyances as set forth or any of them.

These answering defendants state further that on or about the 10th day of October, 1911, W. J. Cook as curator or guardian of the estate of these answering defendants filed a petition in the County Court of Okmulgee County, Okla., asking for an order of said court authorizing said curator as guardian of said estates to sell the interest of the answering defendants in and to the lands above described as heirs of the said *Francis Freeland* and that on or about the 8th day of November, 1911, a purported order made by the County Court of said county purporting to authorize and direct the said guardian as curator to sell the said interest of these answering defendants in and to said real estate. And that on or about the 2nd day of December, 1911, a purported sale was made in said matter

and on or about the 15th day of January, 1912, said court made and entered an order authorizing and directing said curator or guardian to execute and deliver a deed to the said real estate to H. L. Lightsey and John R. Taylor, and that subsequent thereto said curator did execute an instrument purporting to be a deed to the said John R. Taylor, and H. L. Lightsey, describing the interest of these answering defendants in and to said premises.

That said deed was never filed for record or delivered to the said H. L. Lightsey and John R. Taylor and that no part of the consideration therein was ever paid by the said H. L. Lightsey and John R. Taylor to the said guardian or to these answering defendants.

That at the time said sale was made, said land was restricted Indian land and the said guardian was without authority or jurisdiction to sell and convey the interest of these answering defendants in and to said land and the County Court of Okmulgee County was without authority or jurisdiction to order a sale of said premises. And that any and all proceedings had by said court and by said guardian purporting to convey the lands of these answering defendants was and is void and of no force and effect, and that the said H. L. Lightsey and John R. Taylor, acquired no right, title or interest in and to said land by virtue of said purported conveyance and sale. And that such of the defendants herein as claim through conveyances executed by the said H. L. Lightsey and John R. Taylor acquired no right, title or interest in and to said premises by virtue of said conveyances.

These answering defendants allege and state that on or about the 27th day of February, 1913, the said guardian W. J. Cook under proper order of the County Court of Okmulgee County, State of Oklahoma, executed and delivered to the defendant the Hoppy-Toad Oil and Gas Company, a corporation, an oil and gas lease conveying to the said Hoppy-Toad Oil and Gas Mining Company the interest of these answering defendants in the above described premises for oil and gas purposes, which oil and gas mining lease was duly approved by the County Court of Okmulgee County, and appears of record in the office of the Register of Deeds now the County Clerk of Okmulgee County in book M-59 at page 369 of said records.

That these answering defendants are informed and believe that said oil and gas mining lease was subsequently filed in the office of the United States Indian Superintendent at

Muskogee, Oklahoma, Union Agency, for approval by the Secretary of the Interior, and that said lease is now in the office of the said United States Indian Superintendent.

Wherefore these answering defendants pray an order of this court, ordering and decreeing that these answering defendants are the owners in fee simple each of an undivided one-fourth interest in and to the lands hereinabove described as heirs of the said Freeland Francis, and for such other and further relief as to the court may seem proper.

AMOS FRANCIS and
ELIZABETH FRANCIS,
Minors,

By W. C. FRANKLIN,
Guardian ad litem.

Endorsed: Filed Mar. 1, 1915, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 10th day of May, A. D. 1915, the defendants A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling filed answer to the cross petition of Amos Francis and Elizabeth Francis by their guardian *ad litem*, which is in words and figures as follows:

Answer of the Defendants A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling to the Cross-Petition of Amos Francis and Elizabeth Francis by Their Guardian *Ad Litem*, W. C. Franklin.

Come now the defendants, A. W. Shulthis, E. J. Lambert, W. H. Whitford, and R. L. Ebling, and answering the cross-petition of the defendants, Amos Francis and Elizabeth Francis, by their duly appointed guardian *ad litem*, W. C. Franklin, say:

I.

They admit that Amos Francis and Elizabeth Francis are minors and that they are duly enrolled citizens of the Creek Nation and that their names appear upon the approved rolls of the citizens of said nation as full blood citizens opposite roll No. .... and ..... respectively; that they are the chil-

dren of the plaintiff herein, Annie Francis and her husband, William Francis; that the said Annie Francis is a duly enrolled full blood citizen of the Creek Nation, her name appearing on the approved rolls of citizens of the Creek Nation opposite No. 8304, and that said William Francis was duly enrolled as a citizen of the Creek Nation, his name appearing upon the tribal rolls opposite No. 460; that there was born to the said William Francis and Annie Francis, viz., Amos Francis, Elizabeth Francis and Freeland Francis; that Freeland Francis was duly enrolled as a citizen of the Creek Nation, his name appearing upon the Creek Tribal Rolls opposite No. 1070.

II.

Defendants further admit that on or about the 6th day of April, 1905, the said William Francis died, and that on or about the 22nd day of June, 1905, the said Freeland Francis died, at which time he was a minor, unmarried and without issue.

III.

That subsequently, or about the 14th day of December, 1907, there was selected out of the public domain of the Creek Nation, the following described tract of land as and for the allotment of Freeland Francis, deceased, and there was allotted by the Commission to the Five Civilized Tribes to the heirs of Freeland Francis, deceased, the following described tract of land, located in Okmulgee County, Oklahoma, to-wit:

> The East Half of the Southeast Quarter and the South*east* Quarter of the Southeast Quarter of Section Twenty-five (25), and the Southeast Quarter of the Southwest Quarter, all in Section Twenty-six (26), Township Sixteen (16) North, Range Thirteen (13) East,

and that thereafter, on or about the 10th day of December, 1908, patents covering said lands were duly issued to the heirs of the said Freeland Francis.

IV.

The defendants admit that on or about the 10th day of March, 1907, William J. Cook was appointed guardian of the estates of Amos Francis and Elizabeth Francis by the United States District Court for the Western District of the Indian Territory, Muskogee, and that the said William J. Cook is now the duly appointed, qualified and acting guardian of the estates of Amos Francis and Elizabeth Francis, and that

said guardianship is now pending in the County Court of Okmulgee County in the State of Oklahoma.

V.

The defendants admit the execution of the instruments set up in defendants' cross-petition and admit that the said instruments appear of record in the office of the Register of Deeds of Okmulgee County, but deny that the following mentioned of said instruments are void and of no force or effect, and deny that at the time of the execution of said instruments that the lands therein described were restricted and inalienable and deny that Annie Francis had no authority to convey said premises; that the instruments which are valid and convey title are as follows:

(a) A warranty deed from Annie Francis to the defendant Laura McGinnis, executed on the 15th day of January, 1908, and filed for record on the 18th day of January, 1908, and recorded in Book D-6-A at page 6 of said record.

(b) A warranty deed from the said Laura McGinnis and her husband to the defendant H. L. Lightsey and John R. Taylor, executed on the 18th day of January, 1909, and filed for record on the 21st day of January, 1909, and recorded in Book D-17-A at page 392.

(c) A warranty deed from Mack Francis to the defendants H. L. Lightsey and John R. Taylor executed on the 5th day of January, 1912, and filed for record on the same day and recorded in Book D-39-A at page 481 of said records.

(d) A certain oil and gas mining lease made by the defendants H. L. Lightsey, John R. Taylor, R. C. Martin, H. M. Kirkpatrick and Thomas W. Daniel to the defendant lessee, A. W. Shulthis on the 5th day of April, 1913, and filed for record on the 23rd day of April, 1913, and recorded in Book M-84 at page 146.

Defendants allege and say that each and every one of the above mentioned instruments are valid and convey an interest in said premises.

VII.

The defendants deny that Amos Francis and Elizabeth Francis are the only children born to William Francis and

Annie Francis and that upon the death of Freeland Francis he left surviving him as his sole and only heirs at law his mother, Annie Francis, and his brother and sister, Amos Francis and Elizabeth Francis.

VIII.

The defendants deny that the said Amos Francis and Elizabeth Francis are each the owners of an undivided one-fourth interest in and to the lands above described, or any right, title or interest therein whatsoever, said interest having heretofore been conveyed to the defendants Lightsey & Taylor.

IX.

The defendants admit that on the 10th day of October, 1911, W. J. Cook, as guardian of the estates of Amos Francis and Elizabeth Francis filed his petition in the County Court of Okmulgee County, Oklahoma, asking for an order of said court authorizing the said guardian to sell the interests of said minors in and to the lands above described as heirs of the said Freeland Francis, and that on or about the 8th day of November, 1911, an order was made by the County Court of said County authorizing and directing the said guardian to sell the said interests of said minors in and to said real estate and that on or about the 2nd day of December, 1911, a sale was made to H. L. Lightsey and John R. Taylor, and that on or about the 15th day of January, 1912, the court made and entered an order authorizing and directing said guardian to execute and deliver a deed to the interests of said minors in said land to H. L. Lightsey and John R. Taylor, and that subsequent thereto the said guardian executed a guardian's deed to the said H. L. Lightsey and John R. Taylor describing the interests of the said Amos Francis and Elizabeth Francis.

The defendants deny that the said deed was never filed for record or delivered to the said H. L. Lightsey and John R. Taylor, and deny that the consideration therein stated was never paid by said grantees to the said guardian, or the said Amos Francis and Elizabeth Francis and further deny that the said land at the time of said sale was restricted Indian land and that the guardian was without authority to sell and convey the interest of said minors in and to said land, and deny that the County Court of Okmulgee County was without authority or jurisdiction to order a sale of said premises, and deny that said proceedings had by the County Court of Okmulgee Coun-

ty are void and of no force or effect, and that the said H. L. Lightsey and John R. Taylor acquired no right, title or interest in or to the above described lands by virtue of said guardian's deed.

X.

The defendants admit that on the 27th day of February, 1913, W. J. Cook, as guardian of Amos Francis and Elizabeth Francis executed to the Hoppy Toad Oil & Gas Company an oil and gas lease, but these defendants deny that said lease conveyed any interest in and to the premises, but allege and say that all the right, title and interest belonging to said minors had theretofore been conveyed by a guardian's deed to H. L. Lightsey and John R. Taylor and at the time of the execution of said lease the said minors did not own any interest in said premises. The defendants admit that said lease was filed for record in the office of the Register of Deeds of Okmulgee County and recorded in Book M-59 at page 369. Defendants deny that said lease was ever filed and approved with the United States Indian Superintendent at Muskogee, Oklahoma, or that any steps were ever taken to procure the approval of it by the Secretary of the Interior.

Wherefore, Defendants having fully answered the cross-petition of said defendants pray that they take nothing thereby; that they be declared to have no right, title or interest in said premises, but that said deed executed by W. J. Cook, as guardian of the estates of Amos Francis and Elizabeth Francis, on the 15th day of January, 1912, which said sale was duly confirmed by the County Court of Okmulgee County, be held valid and that the said John R. Taylor and H. L. Lightsey be held to have acquired all of the right, title and interest of said minors by said deed; that the oil lease of the defendant, A. W. Shulthis, be held to be a good, valid and subsisting lease, and that he have his costs herein laid out and expended and that he have all such other equitable relief to which he may be entitled.

RAMSEY & DE MEULES,
WILLIAM M. MATTHEWS,
Solicitors for Defendant, A. W. Shulthis.

Endorsed: Filed May 10, 1915, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 18th day of May, A. D. 1915, the defendants Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor filed answer to the answer and cross petition of Amos Francis and Elizabeth Francis by their guardian *ad litem*, which is in words and figures as follows:

Joint and Several Answer and Reply of the Defendants Thomas W. Daniel, R. *E.* Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor to the Answer and Cross-Petition of Amos Francis and Elizabeth Francis by Their Guardian *Ad Litem.*

Comes now defendants Thomas W. Daniel, R. *E.* Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey, and John R. Taylor and for their answer and reply to the cross petition and answer of Amos Francis and Elizabeth Francis, minors, by their guardian *ad litem*, W. C. Franklin, says:

I.

They admit that Amos Francis and Elizabeth Francis are minors and that they are duly enrolled citizens of the Creek Nation and that their names appear upon the approved rolls of the citizens of said nation as full blood citizens opposite roll No. .... and ...., respectively; that they are the children of the plaintiff herein, Annie Francis and her husband, William Francis; that the said Annie Francis is a duly enrolled full blood citizen of the Creek Nation, her name appearing on the approved rolls of citizens of the Creek Nation opposite No. 8304, and that said William Francis was duly enrolled as a citizen of the Creek Nation, his name appearing upon the tribal rolls opposite No. 460; that there was born to the said William Francis and Annie Francis, viz., Amos Francis, Elizabeth Francis and Freeland Francis; that Freeland Francis was duly enrolled as a citizen of the Creek Nation, his name appearing upon the Creek Tribal Rolls opposite No. 1070.

II.

Defendants further answering admit that on or about the 6th day of April, 1905, the said William Francis died, and

that on or about the 22nd day of June, 1905, the said Freeland Francis died, at which time he was a minor, unmarried and without issue.

III.

That subsequently, or about the 14th day of December, 1907, there was selected out of the public domain of the Creek Nation, the following described tract of land as and for the allotment of Freeland Francis, deceased, and there was allotted by the Commission to the Five Civilized Tribes to the heirs of Freeland Francis, deceased, the following described tract of land, located in Okmulgee County, Oklahoma, to-wit:

> The East Half of the Southeast Quarter, and the South*east* Quarter of the Southeast Quarter of Section Twenty-five (25), and the Southeast Quarter of the Southwest Quarter, all in Section Twenty-six (26), Township Sixteen (16) North, Range Thirteen (13) East,

and that thereafter, on or about the 10th day of December, 1908, patents covering said lands were duly issued to the heirs of the said Freeland Francis.

IV.

The defendants admit that on or about the 10th day of March, 1907, William J. Cook was appointed guardian of the estates of Amos Francis and Elizabeth Francis by the United States District Court for the Western District of the Indian Territory, Muskogee, and that the said William J. Cook is now the duly appointed, qualified and acting guardian of the estates of Amos Francis and Elizabeth Francis, and that said guardianship is now pending in the County Court of Okmulgee County in the State of Oklahoma.

V.

The defendants admit the execution of the instruments set up in defendants' cross-petition and admit that the said instruments appear of record in the office of the Register of Deeds of Okmulgee County, but deny that the following mentioned of said instruments are void and of no force or effect, and deny that at the time of the execution of said instruments that the lands therein described were restricted and inalienable and deny that Annie Francis had no authority to convey said premises; that the instruments which are valid and convey title are as follows and none other, viz:

(a) A warranty deed from Annie Francis to the defendant Laura McGinnis, executed on the 15th day of January, 1908, and filed for record on the 18th day of January, 1908, and recorded in Book D-6-A at page 6 of said record.

(b) A warranty deed from the said Laura McGinnis and her husband to the defendant H. L. Lightsey and John R. Taylor, executed on the 18th day of January, 1909, and filed for record on the 21st day of January, 1909, and recorded in Book D-17-A at page 392.

(c) A warranty deed from Mack Francis to the defendants H. L. Lightsey and John R. Taylor executed on the 5th day of January, 1912, and filed for record on the same day and recorded in Book D-39 ' at page 481 of said records.

(d) A certain oil and gas mi. ng lease made by the defendants H. L. Lightsey, John R. Taylor, R. C. Martin, H. M. Kirkpatrick and Thomas ' . Daniel to the defendant lessee, A. W. Shulthis on t . ' day of April, 1913, and filed for record on the 23rd day of April, 1913, and recorded in Book M-84 at page 146.

Defendants allege and say that each d every one of the above described instruments are valid an convey an interest in said premises.

VI.

The defendants deny that Amos Francis and Elizabeth Francis are the only children born to William Francis and Annie Francis and that upon the death of Freeland Francis he left surviving him as his sole and only heirs at law his mother, Annie Francis, and his brother and sister, Amos Francis and Elizabeth Francis.

VII.

The defendants deny that the said Amos Francis and Elizabeth Francis are each the owner of an undivided one-fourth interest in and to the lands al.. described, and deny th ey have any right, title or interest therein whatsoever, said interest having heretofore been conveyed to the defendants H. L. Lightsey and John R. Taylor.

VIII.

The defendants admit that on the 10th day of October, 1911, W. J. Cook, as guardian of the estates of Amos Francis and Elizabeth Francis filed his petition in the County Court of Okmulgee County, Oklahoma, asking for an order of said court authorizing the said guardian to sell the interests of said minors in and to the lands above described as heirs of the said Freeland Francis, and admit that on or about the 8th day of November, 1911, an order was made by the County Court of said county authorizing and directing the said guardian to sell the said interests of said minors in and to the hereinbefore described real estate and admit that on or about the 2nd day of December, 1911, a sale was made of said land to H. L. Lightsey and John R. Taylor and that on or about the 15th day of January, 1912, the court made and entered an order authorizing and directing said guardian to execute and deliver a deed to the interests of said minors in said land to defendants H. L. Lightsey and John R. Taylor, and that subsequent thereto the said guardian executed and delivered a guardian's deed to the said H. L. Lightsey and John R. Taylor describing the interests of the said Amos Francis and Elizabeth Francis.

The defendants further answering deny that the said deed was never filed for record or delivered to the said H. L. Lightsey and John R. Taylor and deny that the consideration therein stated and for which said land was sold was never paid by said grantee to said guardian or the said Amos Francis and Elizabeth Francis and further deny that the said land at the time of said sale was restricted Indian land and that the guardian was without authority to sell and convey the interest of said minors in and to said land and deny that the County Court of Okmulgee was without authority or jurisdiction to order a sale of said premises and deny that said proceedings had by the County Court of Okmulgee County are void and of no force or effect and deny that the said H. L. Lightsey and John R. Taylor acquired no right, title or interest in or to the above described lands by virtue of said guardian's deed and defendants further answering allege that the purchase price of the interest of said minors in the land described was fully paid into the hands of the Department of the Interior and the Superintendent of the Indian Agency, at Muskogee, Oklahoma, with the knowledge, consent and upon the agreement of the said guardian and his said wards and upon the direction and com-

mand of the Secretary of the Interior and defendants allege the said money is now in the hands of the Superintendent of the Indian Agency at Muskogee and in the hands of the Secretary of the Interior and subject to the order of the guardian of said minors and of his said wards.

IX.

The defendants admit that on the 27th day of February, 1913, W. J. Cook, as guardian of Amos Francis and Elizabeth Francis executed to the Hoppy-Toad Oil & Gas Company an oil and gas lease, but these defendants deny that said lease conveyed any interest in and to the premises, and deny that any consideration was paid therefore, but allege and say that all the right, title and interest belonging to said minors had prior thereto been conveyed by a guardian's deed to defendants, H. L. Lightsey and John R. Taylor and at the time of the execution of said pretended lease, above described, the said minors did not own any interest in said premises. The defendants admit that said lease was filed for record in the office of the Register of Deeds of Okmulgee County and recorded in Book M-59 at page 369. But these defendants deny that said lease was ever filed with and approved by the United States Indian Superintendent at Muskogee, Oklahoma, or that any steps were ever taken to procure the approval of it by the Secretary of the Interior, and defendants allege that said pretended lease is now, and at all times has been null and void and of no force and effect.

X.

These defendants further answering adopt as a part of this answer and reply and hereby make a part hereof all the allegations of affirmative matter set out, alleged and pleaded in the answer of these defendants heretofore filed to the amended petition of the plaintiff in all respects as though the allegations of said answers were copied herein.

XI.

Defendants further answering allege that the defendants minors cross petitioners herein by and through their duly appointed, qualified and acting guardian applied to the superintendent of the Union Agency and the Secretary of the Interior, the custodians of the money paid as the purchase price of said land for the payment of said minors of their just share and proportion of said money, thereby releasing the proving and

confirming of said sale, and having made such application for the payment to them of said money, said minors are now estopped from questioning the validity of said sale and are estopped to seek in any way to question or set the same aside or from adopting in the trial of this cause any position not in accordance with the position that said sale was in all respects valid and conveyed to their interest in said premises to the defendants H. L. Lightsey and John R. Taylor.

Wherefore, defendants having fully answered the cross-petition of said defendants, minors, pray that they take nothing thereby; that they be declared to have no right, title or interest *is* said premises, but that said deed executed by W. J. Cook, as guardian of the estates of Amos Francis and Elizabeth Francis, on the 15th day of January, 1912, which said sale was duly confirmed by the County Court of Okmulgee County, to be held valid, binding and conclusive and that the said John R. Taylor and H. L. Lightsey be held to have acquired all of the right, title and interest of said minors by said deed; that the deeds, leases and conveyances of all the defendants in this cause, except such as are hereinbefore in this answer expressly admitted to be valid may be adjudged to be null and void; that the oil lease of the defendant, A. W. Shulthis, be held to be a good, valid and subsisting lease, and that these answering defendants have their title in and to said land quieted and confirmed and that they have their costs herein laid out and expended and that they have all such other equitable relief as may be just and proper.

H. M. KIRKPATRICK,
R. C. MARTIN and
THOS. W. DANIELS,
Pro Se and Attys. for other Defendants,
Solicitors for Answering Defendants.

Endorsed: Filed May 18, 1915, R. P. Harrison, Clerk U. S. District Court for the Eastern District of Oklahoma.

And, to-wit, on the 18th day of May, A. D. 1915, the defendants, Eugene W. Gill, Frank F. Lamb and A. C. Brady, filed Reply to the Answer of Amos Francis and Elizabeth Francis by their Guardian *Ad Litem,* which is in words and figures as follows:

Reply of Eugene W. Gill, Frank F. Lamb and A. C. Brady to the Answer of Defendants Amos Francis and Elizabeth Francis by Guardian *Ad Litem*.

The Defendants for Reply to the Answer of Amos Francis and Elizabeth Francis by Guardian *Ad Litem*, denies each and every material allegation contained in the said Answer which is not specifically admitted herein or in the Answer of these Defendants.

2. These defendants Gill, Lamb and Brady specifically deny the allegation in said Answer alleging that Mack Francis was not the son of William Francis and the half brother of Freeland Francis but asserts the fact to be that Mack Francis was a son of William Francis by his first wife Cilla Francis and was a half brother of Freeland Francis.

Wherefore the said Defendants renew the prayer of their Answer and pray that the court decree that Mack Francis inherited of the lands in controversy, at the death of the allottee Freeland Francis the undivided one-sixth part and that these defendants are the owners of said equity as set forth in their Answer on file herein.

FRANK F. LAMB,
Attorney for Defendants, Gill, Lamb and Brady.

Endorsed: Filed May 18, 1915, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 19th day of May, A. D. 1915, the defendant The Hoppy-Toad Oil & Gas Company filed their Answer to the Amended Petition of the Plaintiff herein, which is in words and figures as follows:

Answer to Amended Petition.

Comes now the defendant, The Hoppy-Toad Oil & Gas Company, a corporation, and for its separate answer to the amended petition of the plaintiff filed herein, says:

This defendant admits that it claims an interest in the East Half (½) of the Southeast Quarter (¼) and the Southwest Quarter (¼) of the Southeast Quarter (¼) of Section Twenty-five (25) and the Southeast Quarter (¼) of the South-

west Quarter (¼) of Section Twenty-six (26) Township Sixteen (16) North, Range Thirteen (13) East, Okmulgee County, State of Oklahoma, the nature of which is as follows:

This defendant is the lessee and owner of an oil and gas mining lease heretofore executed on the 27th day of February, 1913, by the plaintiff, together with William J. Cook, as guardian of Elizabeth Francis and Amos Francis, as lessors, which said oil and gas mining lease was executed and approved in pursuance to the orders of the County Court of Okmulgee County, and is now pending before the Interior Department of the United States Government for approval by the Secretary. That said oil and gas mining lease, together with the order of approval thereof is of record in the office of the Register of Deeds of Okmulgee County, Oklahoma, as alleged in paragraph (f) of said amended petition.

Further answering this defendant denies each and every allegation in said amended petition contained, except such as are hereinbefore expressly admitted.

And now having fully answered, this defendant prays hence to be dismissed with its reasonable costs in this behalf expended.

THE HOPPY-TOAD OIL & GAS COMPANY,
By J. E. THRIFT, *Attorney.*

Endorsed: Filed May 19, 1915, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 24th day of May, A. D. 1915, the defendant Gertrude Womack filed Reply to the answer of Amos Francis and Elizabeth Francis by their Guardian *Ad Litem,* which is in words and figures as follows:

Reply of Defendant Gertrude Womack to Answer of Defendants Amos Francis and Elizabeth Francis by Guardian *Ad Litem.*

Comes now the defendant, Gertrude Womack, and for her separate reply to the answer, counter-claim and cross-complaint of Amos Francis and Elizabeth Francis by their guardian *ad litem,* admits that there appear of record in the office of the Register of Deeds of Okmulgee County the instruments named in said answer.

For further reply this defendant denies each and every allegation contained in said answer which is not admitted in this defendant's answer or which is not admitted herein.

For further reply this defendant denies the allegation of said answer alleging that Mack Francis was not the son of William Francis and the half-brother of Freeland Francis, but this defendant asserts that said Mack Francis was a son of William Francis by his first wife, Cilla, and that said Mack Francis was a half-brother of Freeland Francis.

Wherefore, this defendant renews the prayer of her answer and prays that her interest in and to the lands described in her said answer may be determined and that she may have such other relief to which she may be entitled.

GERTRUDE WOMACK, Dft.,
By BELFORD & HIATT,
Attorneys for Defendant Gertrude Womack.

Endorsed: Filed May 24, 1915, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 24th day of May, A. D. 1915, the Plaintiff filed Reply to the Cross Petition of Amos Francis and Elizabeth Francis by their Guardian *Ad Litem,* which is in words and figures as follows:

Reply of Plaintiff to Cross-Petition of Guardian *ad Litem.*

Comes now the plaintiff and for her reply to the answer and cross-petition of the guardian *ad litem* for Amos Francis and Elizabeth Francis, says that she denies each and every allegation therein contained except those allegations therein which by this plaintiff in her amended petition herein have alleged to be true.

Wherefore she renews the prayer of her amended petition herein.

MERWINE & NEWHOUSE,
Attorneys for Plaintiff.

Endorsed: Filed May 24, 1915, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 25th day of May, A. D. 1915, the following proceedings were had in this cause. Honorable RALPH E. CAMPBELL, Judge presiding:

Order Submitting Cause.

Now on this 25th day of May, 1915, it is ordered that this cause be and the same is hereby submitted to the court upon the agreed statement of facts, testimony offered at the trial and briefs of counsel supplementing their oral argument. Counsel for plaintiff is given ten days from this date to file brief; the guardian *ad litem* is given ten days to file his brief, and counsel for defendants are given fifteen days thereafter to file reply briefs.

And, to-wit, on the 17th day of February, A. D. 1917, the Plaintiff filed Statement of the Evidence, which is in words and figures as follows:

Statement of Evidence.

Now on this 24th day of May, 1915, at the courtroom of the District Court of the United States for the Eastern District of Oklahoma, at Muskogee, Oklahoma, there appeared for parties litigant in the above entitled and numbered cause, on behalf of the plaintiff, J. R. League and W. L. Merwine; and on behalf of the defendant Harry Bell, N. A. Gibson; on behalf of defendants Harry F. Eagan, Howell H. Brown, A. C. Bradley, Eugene W. Gill, and Frank F. Lamb, Frank F. Lamb and Frank F. Lamb, *pro se;* on behalf of H. L. Lightsey, John R. Taylor, Thomas W. Daniel, John V. McMahon, J. S. Kirkpatrick, R. C. Martin, and H. M. Kirkpatrick, and R. C. Martin *pro se*, and H. M. Kirkpatrick *pro se;* on behalf of defendant Gertrude Womack, Belford & Hiatt; on behalf of defendants, Amos Francis, Elizabeth Francis, and W. C. Franklin, guardian *ad litem*, P. J. Carey; and on behalf of A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling, George S. Ramsey and William M. Matthews; and

All of the aforesaid parties appear in open court and agree to the following state of facts:

1. That Freeland Francis was duly enrolled as a citizen of the Creek Nation, his name appearing upon the rolls opposite No. 1070, New Born, and that he was enrolled as a three-quarter blood Indian. It is agreed that the Dawes Commission roll card hereto attached, as exhibit "A", may be used and read in evidence.

2. That Freeland Francis was born on the 30th day of April, 1903, and that he died the 22nd day of June, 1905, without issue, unmarried, and without having selected an allotment of land in the Creek Nation; and that he was enrolled as a citizen of the Creek Nation on the 10th day of June, 1905.

3. On December 4th, 1907, the land in controversy in this case, to-wit:

> E2 of the SE4 and the SW4 of the SE4 of section 25; and the SE4 of the SW4 of section 26, all in township 16 north, range 13 east, in Okmulgee County, State of Oklahoma,

was selected and allotted by the Commission to the Five Civilized Tribes, in the name of Freeland Francis, New Born Citizen Roll No. 1070, as shown by exhibits "B" and "C", which it is agreed may be used in evidence in the trial of this cause; and that thereafter patents therefor were issued by the Creek Nation, on the 10th day of December, 1908, which patents were thereafter approved by the Secretary of the Interior, copies of said patent being attached to plaintiff's amended petition, which it is agreed may be considered as introduced in evidence in this case, with all endorsements thereon, showing the recording in the office of the Commissioner to the Five Civilized Tribes.

4. It is agreed that the father of Freeland Francis was William Francis, and that William Francis died, intestate, on the 6th day of April, 1905; and that the mother of Freeland Francis is the plaintiff in this cause, Annie Harris, formerly Annie Francis. That Freeland Francis also left surviving him a full-brother, Amos Francis, and a full-sister, Elizabeth Francis. That said William Francis was a duly enrolled citizen of the Creek Nation, and was enrolled upon the Indian rolls as a half-blood. That the plaintiff, Annie Francis, was also enrolled as a citizen of the Creek Nation, her name appearing upon said rolls as a full-blood Indian, and that Amos Francis and Elizabeth Francis were enrolled upon the

Creek Indian rolls, their names appearing thereon as full-blood Indians.

5. That Amos Francis and Elizabeth Francis are minors, and that W. C. Franklin is the duly appointed guardian *ad litem* of said minors, and that W. J. Cook is the legally appointed guardian of their persons and estates, and that he was appointed as such guardian on the 10th day of March, 1907, by the United States Court for the Western District of the Indian Territory, at Muskogee, and that said guardianship proceedings were subsequently removed, after the advent of statehood, to the County Court of Okmulgee County, and that said guardianship proceedings are pending in that court at this time.

6. It is agreed that on the 15th day of January, 1908, the plaintiff executed a deed to the defendant Laura L. McGinnis, covering the above-described allotment of Freeland Francis; that said deed was filed for record in the office of the Register of Deeds of Okmulgee County, Oklahoma, on the 18th day of January, 1908, and was filed in the office of the United States Indian Agent, at Union Agency, in Muskogee, on the 31st day of December, 1909, together with an application for the approval of the same by the Secretary of the Interior; and that the said deed was transmitted to the Secretary of the Interior, at Washington, D. C., and on July 6th, 1910, he entered the following endorsement upon said deed, over his signature:

> "The conveyance by Annie Francis, of her interest as fullblood Indian heirs, in and to the within described lands allotted to Freeland Francis, a New Born Creek citizen, Roll No. 1070, who died prior to May 27th, 1908, is hereby approved, in accordance with the provisions of the Act of Congress approved April 26, 1906." Signed, "Frank Pierce, First Assistant Secretary of the Interior."

That said deed was returned by the Secretary of the Interior to the United States Indian Agent, at Muskogee, Oklahoma, and with the above-quoted endorsement upon the back of said deed, a copy of the letter from the Secretary, transmitting the deed back to the Indian Office, at Muskogee, is hereto attached and exhibit "D", and it is agreed that said copy may be read in evidence, without further proof of authenticity.

7. On the 8th day of January, 1909, the said Laura L. McGinnis executed to H. L. Lightsey and John R. Taylor a warranty deed, covering the above-described tract of land, which said deed was duly acknowledged before a notary public and filed for record in the office of the Register of Deeds of Okmulgee County, Oklahoma, on the 21st day of January, 1909, and recorded in the records thereof.

8. That on the 15th day of January, 1912, W. J. Cook, as guardian of Elizabeth Francis and Amos Francis, executed, under the orders of the County Court of Okmulgee County, Oklahoma, a guardian's deed to H. L. Lightsey, and John R. Taylor, which said deed was duly acknowledged before a notary public and filed for record, on the same day, in the office of the Register of Deeds of Okmulgee County, and recorded in the records thereof, in Book M-63, at page 606; that said deed was filed in the office of the United States Indian Agency at Muskogee, together with an application for the approval of the same by the Secretary of the Interior, on the .... day of ....., 1912, and that said deed was forwarded to the Secretary of the Interior by the said Indian Agency, with recommendations that it be approved by him, and that the said Secretary of the Interior endorsed upon the said deed, the following:

> "Department of the Interior, Washington, D. C., October 8th, 1912. The approval refused, the grantors having, subsequent to the death of Freeland Francis, taken the land described in the within deed as allottees in their own rights instead of by ancestral descent, who were at the time of the attempted conveyance without authority to alienate the same, in the absence of an order removing restrictions." Signed, "Samuel Adams, First Assistant Secretary of the Interior."

9. On the 5th day of April, 1913, H. L. Lightsey, J. R. Taylor, and others, executed to the defendant A. W. Shulthis an oil and gas lease covering the above-described tract of land, which said lease was duly acknowledged by the lessors before notaries public, and filed for record in the Register of Deeds office of Okmulgee County, on the 23rd day of April, 1913, and recorded in the records thereof in M-84, on page 146.

10. The sale referred to in section 8 of this agreed statement made by the guardian of Elizabeth and Amos Francis,

through the County Court of Okmulgee County, was confirmed by the Okmulgee County Court, as shown by a copy of the order of confirmation hereto attached, as exhibit "...," which may be considered as a part of the evidence in this case; and there is also hereto attached a copy of the deed executed by the guardian under that sale to H. L. Lightsey and John Taylor, which is hereto attached as exhibit "...," and made a part of the evidence in this case. The copy of the deed, exhibit "...," executed by the guardian to Lightsey and Taylor, does not show the endorsement made by the Secretary of the Interior, that endorsement having been copied into section 8 of this agreed statement, and shown on the original deed.

11. That Mack Francis was the son of William Francis, by Silla, a citizen of the Creek Nation, who died before receiving an allotment of the lands of the Creek Nation; and that said Mack Francis was enrolled as a citizen opposite roll No. .....; and that the instruments set up in the answer and cross-petition of W. C. Franklin, as guardian *ad litem* for Amos and Elizabeth Francis, were executed and placed of record as alleged therein. A copy of field card No. 125, showing the enrollment of Mack Francis may be introduced and read in evidence. And that Mack Francis reached his majority April 6th, 1910.

12. It is further agreed that Maud Mitchell, the grantee in said deed dated April 9th, 1910, died while a resident of Muskogee County, State of Oklahoma, on September 17th, 1911, intestate, leaving her surviving her husband, J. Orlando Mitchell, and her daughter, the defendant Gertrude Womack, and leaving her surviving no other descendants.

13. It is admitted that William J. Cook was duly appointed administrator of the estate of Freeland Francis, by the United States Court of the Western District of Indian Territory, sitting at Muskogee, on the 25th day of March, 1907, and gave bond as such administrator, a copy of the order appointing said administrator, letters of administration, and of said bond, duly certified, are hereto attached, marked exhibits "...," "...," and "...," and may be used as evidence in this cause.

14. That a deed was made by Annie Harris, formerly Annie Francis, the plaintiff in this case, to H. H. Bell, the defendant, purporting to convey all of her interest in the land in

controversy, on the 27th day of February, 1913, and recorded in the office of the Register of Deeds of Okmulgee County, Oklahoma, on February 27th, 1913, at 10 o'clock, 50 minutes, a. m., in Book "D"-85, at page 90, and that this deed was approved on February 27th, 1913, by Mark L. Bozarth, County Judge of Okmulgee County, Oklahoma, and on February 28th, 1913, by Thomas W. Leahy, County Judge of Muskogee County, Oklahoma, the said deed and certified copies of the two orders of approval being hereto attached and marked defendant Bell's exhibits 1, 2 and 3; and that the same may be read in evidence.

Annie Harris,
by Merwine & Newhouse
& J. R. League,
Harry H. Bell
by N. A. Gibson, his Solic.,
Frank F. Lamb,
Atty. for E. W. Gill,
Belford & Hiatt,
Attys. for Gertrude Womack,
W. C. Franklin,
Guardian *ad litem*,
By P. J. Carey, his Atty.,
George S. Ramsey,
Wm. M. Matthews,
Attorneys for A. W. Shulthis, *et al.*,
R. C. Martin,
H. M. Kirkpatrick and
J. S. Kirkpatrick,
Attys. for Lightsey, Taylor and Daniels.

And thereupon came on for hearing before the Honorable RALPH E. CAMPBELL, Judge presiding, the above entitled and numbered cause, and the agreed statement of facts as above set forth having been presented to the court, proceedings herein were had as follows:

Evidence on behalf of the complainant ANNIE FRANCIS HARRIS, being first duly sworn, upon oath testified as follows:

Direct Examination by Mr. League.

Q. You may state your name. A. Annie Francis Harris.

Q. Annie Francis Harris? A. Yes, sir.

Q. What was your former name before you married Harris? A. Annie Francis.

Q. What was your husband's name at that time?

A. William Francis.

Q. Did you and William Francis have some children?

A. Yes, sir.

Q. What children did you and he have?

A. We had Elizabeth Francis, and Freeland Francis and Jaron Francis.

Q. Where is that child now? A. He is dead.

Q. Do you remember when he died?

A. Yes, sir, he died May 23rd.

Q. What year? A. 1905.

Q. Is Freeland and Elizabeth still living?

A. Freeland is dead.

Q. When did he die? A. He died June 24th, 1905.

Q. Do you remember where he died?

A. He died in Wagoner County, across the river there.

Q. Across the river? What river do you mean?

A. The Arkansas river.

Q. Do you mean on the north side of the river?

A. Yes, sir.

Q. Have you any other children, Mrs. Harris?

A. I have got one.

Q. What is his name? A. Amos Francis.

Q. Is he living? A. Yes, sir.

Q. Is Elizabeth living at this time? A. Yes, sir.

Q. Where do you live? A. I live at Milsay, now.

Q. Where is that, Mrs. Harris?

A. Between Depew and Sproud.

Q. How long have you lived there?

A. Just about a year ago.

Q. Where did you live prior to that?

A. I used to live across the river and then I moved to Henryetta.

Q. Do you mean at the place where your son Freeland died?

A. When my son died, I was living here across the river.

Q. How long did you continue to live there after his death?

A. I was to live there as long as I wanted to.

Q. Do you know about how long that was?

A. After the child died?

Q. Yes.

A. Well, I stayed there, maybe just about two or three months after that.

Q. Two or three months? A. Yes.

Q. Do you remember the year in which he died?

A. I remember the year when he died; 1905.

Q. 1905? A. Yes, sir.

Q. Was your husband, William Francis, living at that time? A. No, sir, he was dead.

Q. When did he die? A. He died April 6th, 1905.

A. And you lived there two or three months after your child Freeland died? A. Yes, sir.

Q. Where have you been living since that time?

A. I moved to my sister-in-law's at Henryetta.

Q. Do you know where the land allotted to your son Freeland is?

A. No, sir; the Commissioners allotted it; I never seen it.

Q. Have you ever seen that land?

A. I seen it here about a year ago.

Q. Do you know Harry Bell?

A. I don't know him but maybe I might see him, I might know him.

Q. You might know him if you were to see him?

A. Yes, sir.

Q. Do you see him in this room at this time?

A. No, sir, I don't believe I do.

Q. You don't see him here? A. No,

Do you know Theodore Stidham?

A. I know Theodore Stidham sitting back yonder.

Q. Do you remember a transaction in which Theodore Stidham came to your home and got you to come to Muskogee, about two years ago? A. Yes, sir.

Q. What happened at that time, Mrs. Harris?

A. Why, Theodore Stidham came to my house in the night —he came to my house in the night and said he wanted me to come to Muskogee, he wanted to take a lease, and I said I didn't want to come and he said, come on, let's go, and we got here and he said we had to go to court and he never carried me to court. He carried me to some lawyer's office and took the lease.

Q. Do you know the name of the lawyer's office?

A. No, sir, I don't know anyone there, only Garfield.

Q. That is the only person there that you knew?

A. Yes, sir.

Q. Did someone afterwards come in?

A. Yes, sir, one more came in and they said it was Harry Bell.

Q. Said it was Harry Bell? A. Yes, sir, he came in.

Q. Is this the gentleman here?

A. I guess it is, it don't look like it to me. He came in and shook hands with me. I never paid any attention to none of them.

Q. What occurred after the man called "Harry Bell" came? A. Sir?

Q. What happened after Harry Bell came? What was done? A. Harry Bell took the lease.

Q. Took a lease? A. Yes, sir.

Q. Was that what was said to you; that you were there to make a lease? A. Yes, sir.

Q. Can you state to the court what the conversation was; state if you please, all that you remember that was said to you and by you at that time. Who said that they wanted you to make a lease? These gentlemen? A. Yes.

Q. Did he say anything to you about making a deed?

A. No, sir, he never said nothing to me about it.

Q. Do you remember signing some papers?

A. Yes, sir, I remember signing the lease, alright enough.

Q. You remember what they called a lease? A. Yes, sir.

Q. Did you read it?

A. I could read a little but I couldn't understand it.

Q. Do you know whether you signed any other papers at that time? A. No, sir.

Q. Were you paid any money then?

The Court: Does she mean that she did not sign any others or she does know whether she signed any others?

Mr. League: She doesn't know.

Q. Do you know whether you signed any other papers at that time? A. Not at that time, I didn't.

Q. Do you mean you didn't sign it or——

Q. I didn't sign any others; just that lease.

Q. Just that lease? A. Just that lease.

Q. How much money were you paid at that time?

A. Well, sir, I disremember now. The lease I signed for him for Freeland Francis he gave me $225.00.

Q. Where were you paid that $225.00?

A. He paid me at Okmulgee.

Q. Were you given any money here that day in Muskogee?
A. No, sir.

Q. Were you taken any where else from that lawyer's office that day? A. No, sir.

Q. Were you afterwards taken into the County Court of Muskogee County? A. No, sir.

Q. Do you remember going into the County Court of Muskogee County at all? A. No, sir.

Q. When were you down to Okmulgee in the County Court?

A. I remember his carrying me there but I don't remember what date it was.

Q. You don't remember what day it was? A. No, sir.

Q. How long was it after you signed the lease in the lawyer's office here? A. About a week's difference.

Q. About a week? A. Yes, sir.

Q. Did anyone come to your home then and take you there? A. Yes, sir, Theodore Stidham came.

Q. Theodore Stidham came again? A. Yes, sir.

Q. Why did he tell you that you had to go to Okmulgee?

A. He said that we had to go there to sign before the judge—that is what he said.

Q. You went with him? A. Yes, sir.

Q. Were you told at that time that you were signing a deed, or were you asked to sign a deed? A. No, sir.

Q. When did you first learn that you signed a deed to Harry Bell to this land?

A. Well, another man came from Sapulpa and was telling me about it; he said I had sold some land and he said that he could give me more money for it and that is how I come to find out that Harry Bell had a deed on the place.

Q. Who was that man?

A. I don't know the man. I know it was a white man, is all I know.

The Court: What did you say that man said?

A. He said I had sold some land and he said he came to see me about it and he had a chance to buy it, was what he said, and I told him that I never sold that land.

Q. Where you paid any other consideration, any other money when you went to Okmulgee? A. No, sir.

Q. Have you ever been paid any other money by Harry Bell, except the $225.00? A. That is all.

Q. Did Theodore Stidham pay you any money?

A. No, sir.

Q. Did anybody pay you any money for Harry Bell except this $225.00 paid you here in Muskogee?

A. That is all.

Q. Do you know anything about what this land is worth?

A. No, sir.

Q. When you visited the land, was there any oil wells on it? A. No, sir.

Q. You say you visited it about a year ago? A. Yes, sir.

Q. Do you remember where your child Freeland was buried? A. Buried across the river over here.

Q. How is that?

A. He is buried across the river, across the Arkansas river.

Q. Do you know whose land he is buried on?

A. I don't know whose land it is but they genera' call it Marshall's graveyard.

Mr. Carey: I notice some of the evidence did not sustain the agreed statement of facts. Will that have any effect on the agreed statement of facts?

The Court: The court will take the agreed statement of facts where the testimony of this witness is contrary to it.

Cross Examination by Mr. Gibson.

Q. You say that the only time that you ever saw Harry Bell was when in Buel's office here at Muskogee at the time that you made a lease? A. Yes, sir.

Q. Well, you did make a lease to the Hopy Toad Oil Company, of which Mr. Buel was the manager, didn't you, at the time that you went into Buel's office?

A. Buel's office—say that over again.

Q. At that time that you went into Buel's office, you did make him an oil and gas lease on the land, didn't you?

A. He didn't say no oil and gas lease, he said lease.

Q. Well, don't you know Annie, that you have had several hearings here before the Indian Agent here about the oil lease that you made to the Hopy Toad Oil Company and Mr. Buel and that you appeared there with your attorney Mr. Merwin, and induced the Department to raise the royalty on that lease which you made to Buel from $225.00 up to about $3200.00; don't you remember that?

The Court: Just say yes or no, so that the stenographer can hear you; don't shake your head.

A. No, sir.

Q. Don't you remember that you and your husband, Willie Harris appeared before the United States Indian Agent in regard to the approval of the lease to the Hopy Toad Oil Company that you had, and that you had Mr. Merwin, your attorney, there with you at that time?

A. Yes, I remember that alright enough.

Q. And you know that Mr. Buel did pay you $225.00 as royalty on that lease, didn't he?

A. He said a lease is all I could sell you.

Q. Well, Mr. Buel paid you $225.00 for the lease, didn't he? A. That is all he said, lease.

Q. And when you went to the Indian Agent's office here about a year ago, with Mr. Merwin, your attorney, it was in a hearing about that lease that you made to Buel, wasn't it?

A. Yes, sir.

Q. And the Indian Agent told you that he had raised the bonus on that lease from $225.00 up to about $3200.00, didn't he? A. Well, I guess I tell you I didn't understand.

Q. The lease which you signed to Mr. Buel, or the Hopy Toad Oil and Gas Company, was the same one that had been made to him for your children, wasn't it? You signed the same paper? A. Yes, I remember signing one lease.

Q. Do you know that was when you signed that lease?

A. No, sir.

Q. You didn't sign any deed to Bell there, did you?

A. No, sir.

Q. Where did you sign the deed which you made to Bell?

A. I don't remember signing no deed; he said it was a lease. All that I understand, it was a lease.

Q. You remember going into the office of Moore and Noble, lawyers in Okmulgee, just a few days before you made the lease to Buel?

A. I can't tell you whether it was in Bell's office or not, I know I went in some kind of office.

Q. You went into an office in Okmulgee on the 27th day of February, 1913, and signed a deed and acknowledged it before a young lady—great big, fat young lady, didn't you?

A. I remember them saying it was a lease, is all I know.

Q. You write your name, don't you?

A. I can scratch a little.

By Mr. Gibson: Showing witness the defendant Bell's exhibit 1.

Q. Is that your signature there? A. Yes, that is mine.
Q. You signed it, Annie Francis? A. Yes, sir.
Q. Now at the time that you signed that on February 27, 1913, were you married to this man Willie Harris?
A. Yes, sir.
Q. Did you get a license when you were married to him?
A. Yes, sir.
Q. Where did you get it? A. Got it here at Muskogee.
Q. He is a negro, isn't he? A. Why, yes sir.
Q. And not on an Indian roll at all?
A. Yes, sir, he is on the Freedman roll.
Q. On the Freedman roll? A. Yes, sir.
Q. And you were on the Creek Indian roll? A. Yes, sir.
Q. And you got a license here to marry him?
A. Yes, sir.
Q. When?
A. I don't know but we bought a license in the United States Court.
Q. Before statehood or after statehood?
A. Before statehood.

Mr. Merwin: I want to interpose objections to the question—not disputed here.

Mr. Gibson: He charged that she was ever-reached; charges that he induced her to sign the lease in the name of Annie Harris when in reality she was married, and seems to charge some effort at fraud——

The Court: Is it conceived by you that it is really a material matter here whether that marriage was valid or not?

Mr. Gibson: Well, not materially, no, because I don't think it would affect anything except possibly her credibility.

The Court: Well, I don't think we will go into that.

Mr. Gibson: Very well; I don't desire to pursue it any further anyhow.

Q. Isn't it a fact that on the 27th day of February, 1913, at the time you signed this paper which I have just showed you that you went into Moore and Noble's office at Okmulgee, Oklahoma, and signed this paper and that Mr. Ed. Moore, the

lawyer in Okmulgee, paid you the money that was due you for that deed?

A. He didn't say no deed; he gave me the $225.00.

Q. Now I am not talking about the lease that you signed here for Mr. Buel, I am talking about this paper that you signed before this young woman in Mr. Ed. Moore's office in Okmulgee; do you remember that? A. No, sir.

Q. Did Mr. Ed. Moore, in Okmulgee, pay you $225.00 for the deed on this land?

A. He told me that he would pay me the $225.00.

Q. Then you came over here and a few days afterwards made another lease to Mr. Buel and got $225.00 more, didn't you? A. No, sir, it was this same one.

Q. Same one?

A. Yes, sir; and when I came here to Muskogee, in Buel's office, they said it was a lease for the children through the guardian, Mr. Cook, up there.

Q. Well, you got $225.00 from Mr. Moore in Okmulgee, didn't you? A. That is the one.

Q. And you got $225.00 from Mr. Buel over here?

A. I had $225.00 when I came over here.

Q. And you got another $225.00 up here?

A. No, sir, I didn't.

Q. Didn't Buel pay you any money?

A. He didn't pay me $225.00.

Q. How much did Buel pay you?

A. Buel didn't pay me nothing.

Q. Not a cent; are you sure of that?

A. Only them children; the lease that I signed, he give me the money.

Q. How much did Buel pay you when you signed the children's lease.

A. I don't know, sir; I don't remember how much it was.

Q. What? A. I don't remember how much it was.

Q. After you signed the paper over there, that I have spoken about in Mr. Moore's office in Okmulgee, didn't you go over into the County Court? A. Yes, sir.

Q. And had that paper that you signed approved by the county judge? A. Yes, sir.

Mr. Merwin: If the court please, we object to that as a conclusion of the witness; the witness does not understand what is meant by being approved. It is a conclusion I am objecting to.

The Court: Well, I will take that into consideration; I will have to determine from all the facts whether or not there was an approval. This now is merely cross examination, touching her recollection of the transaction.

Mr. Merwin: For that purpose, we do not make any objection.

Mr. Gibson: The order of approval is already in evidence.

The Court: Yes it will depend on that.

Q. Then was Theodore Stidham with you that day when you were there at Mr. Moore's office?

A. Theodore Stidham left me there; borrowed four dollars from me and left me.

Q. Did Theodore Stidham go with you to the county judge's office? A. No, sir, he left me.

Q. Who went with you from Mr. Moore's office to the county judge's office? A. It was a white man; I don't know.

Q. Where was the county judge's office?

A. Just across the street; I can't tell you.

Q. Just across the street from Mr. Moore's office? Where was Mr. Moore's office—up stairs or down stairs?

A. It is up stairs.

Q. Do you know what store it is over?

A. No, sir, I can't tell you.

Q. Do you know where the First National Bank building is, in Okmulgee?

A. No, sir, all the buildings look alike to me.

Q. You know that Mr. Moore's office was up stairs?

A. Yes, sir.

Q. How did he pay you the $225.00; in check or money?

A. He gave me a check.

Q. Where did you get the check cashed?

A. Right across the street from the county judge's office.

Q. Right across from the county judge's office, in a bank on the corner? A. Yes, sir.

Q. What did you do with that $225.00?

A. I took part of it and put it in a suit here; that man yonder.

Q. They got part for the suit? A. Yes, sir.

Q. What did you do with the balance of it?

A. The balance of it, I used it.

Q. You never offer to pay the $225.00 back to Mr. Bell, did you? A. I paid him back.

Q. I say you never offered to pay him back?

A. No, sir, never offered to pay him back.

Q. Now, the day that you went before the county judge in Okmulgee, you came over to Muskogee, didn't you?

A. Yes, Theodore Stidham came after me and I came on over here.

Q. Was that the day that you made the lease to Buel?

A. Oh, I have been here several times; I can't tell you what day it was.

Q. You were here several times about this transaction and you don't remember whether that was the day or not?

A. I don't just remember what day it was.

Redirect Examination by Mr. League.

Q. Annie, in your testimony about your children, you said that you had certain children by William Francis, naming them, and then you said you had one other child named Amos. Who is the father of Amos?

Mr. Carey: We object to that on behalf of the guardian *ad litem.*

The Court: Does the agreed statement cover that? We will go by the agreed statement.

Q. When you married William Francis, did he have any children? A. He had one child.

Q. What was his name? A. May Francis.

Q. Did you know his mother?

A. I don't know her but I know the name.

Q. Do you know anything about where William Francis married her?

A. No, sir, I can't tell you anything about that.

Q. Do you know how long he lived with her?

A. No, sir, I can't tell you anything about it.

Q. Were they living together when May was born? Do you know that? A. That is what they say.

Q. Where was May born? Over on the other side of the Arkansas somewhere? A. I can't tell you nothing about that.

The Court: Doesn't the agreed statement of facts cover the May Francis phase of it?

Mr. *Land*: I think there will be no question raised but I want to supplement it with this testimony.

Witness dismissed.

And thereupon RUFUS TUCKER being called and duly sworn, under oath testified as follows:

Direct Examination by Mr. League.

Q. Your name is Rufus Tucker, is it? A. Yes, sir.
Q. Do you know Annie Harris or Annie Francis?
A. Yes, sir.
Q. Did you know her husband William Francis in his lifetime? A. Yes, sir.
Q. Did you know a child of their's, Franklin Francis?
A. Yes, sir.
Q. Where do you live?
A. I live on the other side of the Arkansas river.
Q. In what county do you live? A. In Wagoner county.
Q. How long have you lived there? A. All my days.
Q. How old are you? A. I was born in 1884, I think.
Q. Have you lived there ever since your birth?
A. Yes, sir.
Q. Have you land there? A. Yes, sir.
Q. And did you know the family of William and Annie Francis at the time of William's death?
A. Yes, sir, I think I did.
Q. Where were they living at that time?
A. They were staying on my place.
Q. Did Annie and her children continue to live on your place after her husband's death? A. Yes, sir.
Q. Did you know the child Franklin Francis? A. Yes, sir.
Q. And did that child die there on your land? A. Yes, sir.

Mr. Gibson: If the court please, the defendant Bell objects to that as incompetent, irrelevant and immaterial and not tending to prove any issues in this case. The agreed statement of facts shows that the administration of this child's estate was begun in the United States Court for the Western District of Indian Territory, which your honor will take judicial notice of the fact covered the entire Creek Nation and that the administration proceeding is shown by this agreed statement to be still pending in the County Court of Muskogee County, Oklahoma; and the agreed statement further shows that the deed in question in this case, was approved by the County Court of Muskogee County, Oklahoma, on the 28th day of February, 1913; so the actual place of the death of this child can not be heard in this transaction and would be merely

a collateral attack upon the validity of that administration's proceedings which would not be competent in this case.

Mr. League: We don't think that that necessarily would follow. Under the provisions of the constitution at the coming of statehood, jurisdiction of the probate matters, as we understand it, was vested in the District Court as successor of the United States District Court. At that time, the District Court of Wagoner County probably would have become the successor of the District Court of the United States and the probate proceedings, either administration or guardianship, as we think would necessarily have been in Wagoner County.

The Court: Now, I will tell you: I fail to see how the question of where Freeland died, inasmuch as he died before receiving the allotment, is material here. This is not a case where the deceased had secured his allotment in his lifetime and then died, and this became an inheritance of land in the hands of certain full bloods who sought to convey with the approval of the court having jurisdiction of the deceased estate but this is a case where persons attempting to make the conveyance received the allotment direct. It is not a case of inherited land, in the sense that term is used in the section of the act which provides for the approval by the court having jurisdiction of the deceased—is it your contention that this must be treated as if it were inherited land? Is that it?

Mr. League: Well, possibly, for the purposes of administration. I understand this was an administration of the estate of the deceased child; not a guardianship.

The Court: Well, this was an attempted transfer by certain full-blood heirs of this deceased child, of land which had been allotted to them—selected or allotted at any rate after his death * * * I do not yet see how it is important in this case because I do not believe that that division of the act relating to the sale by full-blood heirs in inherited land, applies where the land was in fact not allotted until after the death of the citizen because of whom it was allotted. It comes direct to the heirs and does not come within that division in regard to inherited lands, in my judgment * * * in view of the question though, I will overrule the question and let you show—you may ask the question.

Q. That was in what is now Wagoner County?
A. Yes, sir.
Q. You remember, Rufus, where this child was buried?
A. Yes, sir.
Q. Where was that?
A. Buried at what they call the Jamison graveyard. I dug the grave myself.
Q. Do you remember when that was?

The Court: It is agreed, isn't it, that he died?

Mr. League: I think so.

The Court: Let's not go into that.

Mr. Gibson: No questions.

Witness dismissed.

Mr. League: The plaintiff rests.

The Court: The plaintiff rests? I believe Mr. Bell's case will be the first. Everything else seems to be covered by the agreed statement of facts.

And thereupon evidence is introduced on behalf of the defendant Harry H. Bell, as follows:

HARRY H. BELL, being first duly sworn, upon oath testified as follows:

Direct Examination by Mr. Gibson.

Q. State your name? A. Harry H. Bell.
Q. Where do you live? A. Muskogee.
Q. Are you the defendant named in this case? A. Yes, sir.
Q. Do you remember the circumstances of the taking of the deed from Annie Francis, or Annie Harris, to you covering the land in controversy?
A. I remember some of them, yes sir.
Q. Where was that deed taken? A. In Okmulgee.
Q. Were you present at the time that the deed was executed? A. No.
Q. Who had authority to and did represent you in the matter? A. Moore and Noble.
Q. Who? A. Moore and Noble, attorneys at Okmulgee.
Q. Were you there at any time during the taking of the deed or the subsequent approval of it by the County Court?

A. No, sir.

Q. Did you have anything to do with the subsequent approval of this by the County Court of Muskogee County, Oklahoma, on February 28, 1913? A. Personally, no, sir.

Q. State whether you ever made any representations of any kind to Annie Francis that this instrument was a lease or whether you ever attempted to procure a lease from her.

A. No, sir, I never attempted to procure a lease from her and the only conversation that I ever had with Annie Francis was when I went to her, here in Muskogee, to come down to the County Court of Muskogee County to get an approval taken there on the deed previously approved in Okmulgee County.

Q. That appears to have been made on the 28th of February. Where did you see her on that day?

A. I saw her here in J. Garfield Buel's office.

Q. State whether or not you made any representations to her that day that you were taking a lease from her.

A. No, I never had anything to do with the lease; never mentioned the lease to her.

Q. Do you remember ever having seen Annie Francis at any subsequent date after February 18th, 1913, regarding any other transaction concerning this land?

A. I don't think I have seen her since then.

Q. State whether or not, you were in Buel's office, as appears from the pleadings in this case, when she executed the lease to the Hopy Toad Oil Company.

A. I don't know whether it was that day; it was the only occasion I ever was here in Buel's office.

Q. You had nothing to do with the lease to the Hoppy Toad Oil Company? A. No, sir.

Q. Do you have any stock in that company? A. No, sir.

Q. Do you know what relation Mr. Buel sustains to that company? A. I think he is the Secretary.

Q. State in regard to the actual management of this affair, was he the actual manager?

A. He was at that time, the actual manager.

Cross Examination by Mr. League.

Q. Mr. Bell, do you know Theodore Stidham?

A. Yes, sir.

Q. Did he represent you in the dealing with Annie Francis or Annie Harris?

A. I sent him out to her house to take her to Okmulgee if he would come and sell this land.

Q. Did you send him to her place to bring her to Muskogee? A. Yes, sir.

Q. You had, however, a deed which was approved in the County Court of Muskogee County?

A. Moore & Noble took for me a deed afterwards approved in Muskogee County.

Q. You had it first approved in the County Court of Okmulgee County? A. Yes, sir.

Q. What consideration did you pay for that deed?

A. $225.00.

Q. That conveyed the 160 acres of land?

A. It conveyed her interest in it.

Q. You took a warranty deed, however, didn't you?

A. I think, for her interest but I won't be sure.

Q. You don't know the contents of the deed?

A. No, sir.

Q. For that you paid $225.00? A. Yes, sir.

Q. Do you know what the land was worth at that time?

A. Well, I had the government appraisement to go by.

Q. And what did that government appraisement show it to be worth? A. $840.00, is my recollection.

Q. $340.00? A. $840.00.

Q. And that was made how long before the time you took this deed? A. Probably a year or so.

A. At the time that you took this deed, there was considerable oil development in that vicinity, wasn't there?

A. No, sir.

Q. Wasn't any at all? A. Yes, sir, one well there.

Q. How close to this land?

A. Probably three quarters of a mile.

Q. That is located on what is now the Wicey Pool?

A. Yes, sir.

Q. Did you negotiate with Annie Harris herself for this land? A. No, sir.

Q. You never discussed the price you were to pay?

A. No, sir.

Q. This man Stidham, acted for you, in your purchase of it, didn't he?

A. Mr. Moore acted for me in the purchase of it.

Q. In the negotiation of the price?

A. I wasn't there, I don't know what each one of them——

Q. Who did you authorize to pay $225.00?

A. Mr. Moore.

Q. Mr. Moore? A. Yes, sir.

Q. Do you know of any other land in that vicinity that sold for anything like that price at that time, or since?

A. I bought 40 acres about a half a mile from there sometime before that time—mixed-blood land, at $5.00 an acre.

Q. Whose land was it?

A. Nicey White, I think is the name of the allottee.

Q. How long before you bought? A. A year or two.

Q. That was before there was any oil property or development at all, wasn't it?

A. Well, it was before any development.

Q. The nearest prospecting up to that time, was how close?

A. I can't say; probably a mile or two or three miles—they were all drilling wild-cat holes around, I don't know how close they were.

Q. You made no representations to Annie Harris at all about this land at the time you purchased it?

A. I never saw her at the time the deed was taken.

Q. You own considerable land in that vicinity don't you, Mr. Bell? A. Yes, sir, some.

Q. The average price of land there is $2000.00 a quarter section up, isn't it, at this time?

A. It is hard to say; it depends on the quality of the land.

The Court: I don't think that is material at this time.

Q. At the time you made this purchase?

A. Well, I can't say without having some idea given me as to the quality of the land.

Q. Do you know of any land of the quality of this that sold out about this land in that vicinity, anything about as cheap as you bought this land?

A. I don't know anything about any sales made there at that time and what the purchase price was, except that I was interested in myself.

Q. Mr. Bell, were you interested in the Hoppy Toad Oil Company lease at the time it was taken? A. No, sir.

Q. Have you any interest in it now? A. No, sir.

Q. Have you been receiving the royalties for Annie Harris? A. I didn't know she had any.

Q. Didn't know anything about that? A. No, sir.

Q. Have the royalties been increased to $3200.00?

A. The bonus?

Q. The bonus.

A. Only as it seems to me as a matter of general information.

Q. You have never received that or any part of it?

A. No, sir.

Q. Can you inform us where you got the information that this bonus was increased to $3200.00?

A. No, I can't at this time; I didn't make any note of it.

Q. I don't remember—I will ask you again: You say that you were not present in the office of Mr. Buel at the time that the lease was taken?

A. No, I said I went up there, having heard that she was in town, to see her about getting this Okmulgee County deed approved in Muskogee County but what she signed up there or anything, I do not know.

Q. You say you went up there to the law office to see her about this? A. About the deed.

Q. About the deed? A. Yes, sir.

Q. Did you have any conversation with her at that time then? A. Yes, sir, about the deed.

Q. What was that conversation?

A. I told her that I wanted to get the deed approved in Okmulgee approved by the Muskogee County Court. I wanted her to come down and satisfy them about the transaction.

Q. Did you pay her any money at the time?

A. No, sir.

Q. She never received any money from you except the $225.00 received through Moore & Noble? A. No, sir.

Q. You made no representations to her about the——

A. I told her that I wanted that deed approved by the judge of the Muskogee County Court.

Q. You said to her that it was a deed, didn't you?

A. Certainly.

Q. Do you remember who else was present at that time?

A. Mr. Buel was in the office; there were several others—I don't remember the others.

Q. Did you see Theodore Stidham there?

A. I don't remember; I can't say.

Q. You never employed Theodore Stidham, did you?

A. I have employed him a great many times.

Q. In deals of this kind?

A. Sending out after people, in deals of this kind; just errands of various sorts.

Q. Who were the witnesses in the County Court when the deed was approved? A. I can't say; you might look on the deed.

Q. Was there a man by the name of Hart?

A. What is his first name?

Q. Did you have a man by the name of Hart in your employ at that time? A. No, sir.

Q. There was no man working for you, on your farms, out in the vicinity of this land, by the name of Hart?

A. That I can't say, Mr. League, we have a good many men located, employed, at different times.

Q. But you don't recognize the man?

A. I know a good many men of that name.

Q. That were working for you then? A. No, sir.

Q. Mr. Bell——

A. May I see that deed for just a moment, Mr. League, with Hart's name on it?

Q. I haven't the deed. I believe you stated, Mr. Bell, that you had frequently employed Mr. Stidham in matters of this kind? A. I have frequently employed him, yes, sir.

Q. Did you *him* employ him to make any negotiations with Annie Harris, or Annie Francis, concerning this matter?

A. I can't remember at this time what part I put on him and what part I put on Mr. Moore; whether I told him what I was going to do after he got to Okmulgee, or whether I told Mr. Moore alone—I can't remember at this time.

Redirect Examination by Mr. Gibson.

Q. Mr. Bell, were you familiar with the value of this piece of land at the time that you made this purchase? A. Yes, sir.

Q. Familiar with the value of lands generally in that vicinity at that time? A. Yes, sir.

Q. State whether or not you have been familiar with the value of land in that neighborhood over a period of several years past? A. Yes, sir.

Q. And for how many years? A. Well, since 1906—7.

Q. At the time that you determined to try to purchase this piece of land, state whether or not you made any investigation to determine what interest, if any, Annie Harris had in the land.

A. Yes, I did. I can tell you just how I figured it.

Q. Very well, tell that.

A. Well, I figured that the land was worth about $5.00 per acre and that Annie Francis had either a half or a fourth, I

didn't know which, and I split the difference between what I was willing to give if she had a half and give if she had a fourth, and paid it that way; paid what the surface was and took the wild cat oil value, and what might be, and paid that on the lease.

Q. Have you paid all you thought the lease was worth?

A. The surface value, yes, sir.

Q. Did it have any unusual oil value at that time?

A. No, sir, one well had been brought in and nobody knew what that was worth, just a scare on.

Q. Did you make any investigations as to the state of the title before you took that deed? A. Yes, sir.

Q. State whether you found out there was unapproved deed? A. I found out that there was an unapproved deed.

Q. State whether you took that into consideration in determining value of that land?

A. I figured that I would have trouble with it.

Q. State whether from your experience in buying land in the Creek Nation the presence of a stray deed or parties claiming to be heirs has an influence in determining the value or affects the value of the land?

A. Yes, sir, there is an allowance for each of those.

Q. On what basis, what do you make an allowance?

A. Well, one experienced in those various deeds it can be told sometimes what the cost of removing each one would be, in a general way, and an approximation is made of that and attorneys have been consulted as to the probability of getting off the various instruments.

Q. If you found where there was a deed or any legal controversy in conveying the land, state whether or not it is ordinarily expensive to have that matter removed?

A. You deduct from the purchase price of the land the cost of eliminating that deed by law suit.

Cross Examination by Mr. Matthews.

Q. Mr. Bell, you say that you found a deed on record on this land at the time you contemplated purchasing it?

A. Yes, sir.

Q. I will ask you if that deed was to Laura L. McGinnis?

A. That is my recollection, yes, sir.

Q. And it was dated on or about the fifteenth day of January, 1908? A. I can't remember the date of it.

Q. It was executed by Annie Harris?

A. That was my recollection that the deed was executed by Annie Harris to some woman by the name of McGinnis.

Q. That was not the—you found that of record in the office of the Register of Deeds, of Okmulgee County, Oklahoma?

A. Yes, sir.

By Mr. Gibson: I would like to ask about one matter that I neglected to ask in regard to the possession subsequent to the taking of his deed; I neglected to go into that. It is an issue rather between him and other defendants, and not as between him and the plaintiff, I think possibly we will cover it at that time.

By the Court: You may ask.

Redirect Examination by Mr. Gibson.

Q. After taking this deed. Mr. Bell, state what if anything you did in regard to taking possession of the land in controversy?

By Mr. Matthews: I object to any statement that he will make unless it is stated on his own knowledge.

By the Court: Certainly, hearsay would be incompetent.

A. I bought some wire and employed some men and built a fence around forty acres of the land and put a man on there.

Q. Did you see the fence yourself? A. Yes, sir.

Q. Who did you put on the land?

A. I first put a man by the name of Craper and later man named Crawford.

Q. How long was it after you took your deed before you began the construction of this fence?

A. Just a matter of a few days.

Q. Did you see the lands at that time? A. Yes, sir.

Q. State whether or not there was any improvements on it or any improvements or person on it in possession of any part of this land at the time you built your fence around it?

A. This land lies in two tracts; one 120 and one 40. The 120 is enclosed by water line and by fencing on the forty that I took possession of.

Q. Do you know who owns the pasture fences surrounding the 120 acres?

A. I think it is in what is called the Burford Miller pasture.

Q. Do you know who was the manager of the Burford Miller estate?

A. I think the estate is in administration, I am not sure.

Q. A son-in-law of Mr. Miller? A. Yes, sir.

Q. Was there anyone on this 120 acres? A. No, sir.

Q. How long did the man Craper stay on the property?

A. Probably ten days.

Q. And then you put Crawford on it? A. Yes, sir.

Q. How long did he stay? A. Four or five weeks.

Q. Who then got possession of it? A. Mr. Shulthis.

Q. How long after Crawford left was it before Shulthis began*ing* drilling?

A. I don't know how long before he began drilling, about the same time that he took possession.

Q. Have you ever been able to get possession of it since that time? A. No, sir.

Q. What time, approximately, was it that you lost the land?

A. I bought the land in the latter part of March, 1913, and took possession of it about a week after I bought it; I lost possession of the property in about six weeks.

Q. Your deed shows February 27, 1913?

A. Well, I didn't know the date.

Q. You said March, did you mean March or February?

A. I mean February.

Q. You took possession about a week afterwards then?

A. Yes, sir.

Q. Did you personally know how Mr. Shulthis got possession from your man, Crawford?

A. I wasn't there, all I know is what Mr. Crawford told me.

Q. Crawford is now dead? A. Yes, sir.

Recross Examination by Mr. Matthews.

Q. Mr. Bell, did you ever claim to have possession then of the 120 acres? A. No, sir.

Q. Only of the forty acres? A. Yes, sir.

Q. Did you state that you put any fence around the 120 acres? A. No, sir.

Q. And you don't know any of the facts surrounding the possession—the delivery of possession by Crawford to Shulthis, of your own knowledge?

A. Well, just did, but I drove down there and found the

fence cut and blowed down and I asked Crawford how it came to be that way.

Q. Well, you don't know of your own knowledge? A. No.

Cross Examination by Mr. League.

Q. This fence, you say, was around the forty acres?

A. Yes, sir.

Q. Was that fence put there before any of those oil wells were drilled? A. Yes, sir.

Q. You didn't drill any of those wells?

A. No, sir, I lost possession of it before I could.

Q. Do you know how many wells are on that forty?

A. I think four, I won't be sure.

Q. What was the character of the land enclosed in that fence, the forty acres?

A. Two-thirds of it was mountain hill side and the balance of it was river bottom. I wouldn't attempt to tell you how much.

Q. It cut the hill and most of it reached the bottom land?

A. I say I wouldn't attempt to tell you how much in each part of it.

Witness dismissed.

And thereupon, E. H. MOORE, being called and duly sworn testified as follows:

Direct Examination by Mr. Gibson.

Q. What is your name? A. E. H. Moore.

Q. Where do you live, Mr. Moore? A. Okmulgee.

Q. You are an attorney at law? A. Yes, sir.

Q. How long have you practiced law in Okmulgee?

A. For fourteen years.

Q. Are you acquainted with the plaintiff, Annie Harris or Annie Francis, an Indian woman who stays—who sits back there?

A. Why, I know a woman by the name of Annie Francis; I don't know whether I know her now or not, I never saw her but one time.

By the Court: Let Annie Harris stand up.

Q. See if you remember seeing her here in your office?

A. Well, I think that is the woman.

Q. Showing you defendant's exhibit one attached to the agreed statement of facts, purporting to be a deed from Annie Francis, I will ask you if you remember the circumstances of the taking of that deed? A. Yes, sir; I do.

Q. Where was the deed taken—where was it actually drawn and signed? A. In my office at Okmulgee.

Q. It appears to be acknowledged before Lena Krups; state if you know who she is.

A. She is our stenographer and notary in our office.

Q. She was your stenographer and notary at that time?

A. Yes, sir.

Q. Do you remember making a payment to Annie Harris of $125.00 on that date?

A. Yes, I remember paying her the amount of money that is written in the deed there.

Q. How was that payment made to her, as you recall it?

A. I can't say positively, but I am quite sure that I gave her our check for that amount of money. It might be possible that I went to the bank and got the money. I either did that or I gave her our check, I can't say which.

Q. Was that money subsequently repaid to you?

A. Yes, sir.

Q. By whom? A. By Mr. Bell.

Q. For whom were you acting in the matter?

A. Harry Bell.

Q. Was anyone present at the time the deed was taken except you and Annie Francis and Miss Krup, the stenographer?

A. Yes, Stidham—Theodore, I believe it is, Stidham, came in with her.

Q. How long did Stidham stay, as you recall it?

A. He stayed there until after the deed was executed and went to the court house with us.

Q. Was the deed approved on the same day, then?

A. I think it was the very same day, I am sure it was.

Q. State whether Mr. Bell was there at any time during this transaction? A. No, he was not.

Q. State whether or not you or anyone in your presence made any representation to Annie Francis that the instrument there being taken was a lease on this land and not a deed?

A. No, I am sure that no such statement as that was made; in fact, the matter was carefully explained to her about what the character of the instrument was she was signing.

Q. By whom, who explained it? A. I did.

Q. Now the question has been asked as to the parties who participated in the appraisement of this land in the County Court; the question has been asked about Mr. Hart, do you know a man by the name of Hart, who acted as one of the appraisers? A. Yes, I do.

Q. Who was he? A. Well, he was——

Q. What was his name? A. Ed. E. Hart.

Q. What business was he engaged in?

A. He is in the stock business and farming.

Q. A man of good standing in that county, or otherwise?

A. Yes, he was a man of good standing.

Q. Do you know whether or not he was ever employed by Harry Bell, or farming for him or anything of that kind?

A. No, I don't think so.

Q. He is a man of large property interests himself, is he not? A. Yes, sir.

Cross Examination by Mr. Merwine.

Q. Mr. Moore, who brought—who came with Annie Harris to your office, or Annie Francis?

A. Theodore Stidham, I believe his name was.

Q. You didn't see her until she was brought there did you? A. No, no.

Q. You had nothing to do or know nothing about the negotiation or what was said to her when she signed that instrument, the instrument was already signed before it came to your office, was it not? A. Oh, no.

Q. It was signed in your office?

A. Well, I think so, I wouldn't be positive of that, but I am quite sure it was because—yes, I think I drew the deed, it has been a couple of years ago and I wouldn't know whether I drew the deed or not, but I know the deed was talked over there and the transaction was carefully explained to her, because I had had considerable curiosity to know who Annie Francis was; she had been gone quite a while and Judge Farrar and I talked about it and I think Judge Farrar was in there at the time the deed was made, I am not positive about that.

Q. You had no knowledge about this transaction until Mr. Stidham brought her to your office?

A. Yes, Mr. Bell had told me that she was coming to my office to make a deed.

Q. Did Mr. Bell correspond with you or see you there personally? A. He was there the day before.

Q. He was there in Okmulgee county?

A. I think so. Might not have been Bell, but I think Harry was there, I might be wrong about that.

Q. Then your information was not by correspondence but made with Bell in person? [A.] I think it was.

Q. Do you think it was the day before that?

A. That is my recollection; I may be wrong about that; I have done a good deal of business for Harry Bell.

Q. Had you seen Mr. Stidham the day before that?

A. No, I think not.

Q. Did Bell say anything to you about what his instructions were to Stidham as to his part in the transaction.

A. I don't recall any conversation of that kind.

Redirect Examination by Mr. Gibson.

Q. Who was the gentlemen to whom you refer as Judge Farrar?

A. He was the field clerk, I believe they call him.

Q. United States Field Clerk? A. Yes, sir.

Q. He was in the service of the Department of the Interior of the United States? A. Yes, sir.

Q. Mr. Moore, in your previous conversation or interviews with Mr. Bell state whether or not he instructed you what amount to pay for this land?

A. Yes, I think he did; I think he told me the amount of money to pay and he may have left the money with me, I don't know whether he did or not.

Recross Examination by Mr. Merwine.

Q. Mr. Ed Hart is a son-in-law of Burford Miller, is he not? A. Yes, I think he is.

Q. And part of this land is enclosed—near by what was known as the Burford Miller estate?

A. No, it is not very close to the Burford Miller land; there may be a little of the Miller land up there but not very much of it.

Q. I believe you stated that Ed Hart was a large property owner, he owns a good deal of land in that section of the country, does he not, Mr. Moore?

A. I don't think he owns much land in that part of the county, he owns lands in adjoining townships.

Q. You represent him, do you not? A. Yes, sir.

Q. Your firm are attorneys for Ed Hart, are they not?

A. Yes, sir.

Q. Ed Hart is interested on the side of purchasing instead of land, isn't he, mostly?

A. Well, I don't know whether he is or not.

Q. In fixing values it would be more to his interest to have them low than to have them high, would it not, naturally?

A. Oh Ed Hart he would give what his opinion was regardless of whether he was——

Q. Well, he has the reputation of being a fairly good land dealer, hasn't he? A. Well, I guess he has.

Q. And the successful land dealer is on the side usually for a low value of land, especially if he is purchaser instead of seller? A. I may not be a judge of that——

By the Court: Let's not go into that controversy; I have had some experience along that line.

(Witness dismissed.)

And thereupon THEODORE STIDHAM, being called and first duly sworn upon oath testifies as follows:

Direct Examination by Mr. Gibson.

Q. Your name is Theodore Stidham? A. Yes, sir.

Q. Where do you live, Mr. Stidham? A. Muskogee.

Q. Do you know Annie Harris, or Annie Francis, the plaintiff in this case? A. Yes, sir.

Q. How long have you know her?

A. I don't know, quite a number of years.

Q. You are a Creek Indian by blood? A. Yes, sir.

Q. Do you speak the Creek language? A. Some.

Q. Do you remember the incident of the execution of a deed by Annie Harris or Annie Francis to Harry Bell, in February, 1913? A. Yes, sir.

Q. State if you had any connection with that transaction and if so, state what it was?

A. Well, Mr. Bell told me to go out and get her and take her to Okmulgee to Moore & Noble's office, that he wanted to buy her interest in that land, so I took her to Okmulgee went out for her and got to Bixby about four o'clock and drove out about thirteen miles from town and took her to Okmulgee; and so in the morning I took her and left her at Moore & Noble's office. I told her that they wanted to make a trade with her in that land and I came on to Muskogee on the nine something train. That is the last I saw of her.

Q. You went out to her house the night before?

A. I left Bixby about four o'clock in the evening and drove out there about thirteen miles.

Q. What time did you get to Okmulgee the next morning?

A. It must have been about eight something.

Q. And left shortly after nine to come to Muskogee?

A. Yes, sir.

Q. You took her to Moore's office? A. Yes, sir.

Q. Do you remember the incident of the making of the deed?

A. There was a large woman in there and he told her to write up a deed that he was going to take a deed for Mr. Bell to that land.

Q. That was the stenographer in the office?

A. Yes, sir, she was a stenographer.

Q. Did she write up the deed? A. I think she did.

Q. Did you see the money paid to Annie Francis?

A. No, sir.

Q. You left before it was paid?

A. Yes, sir, I didn't go to the court house.

Q. State whether or not at any time from the time you first saw Annie Harris or Annie Francis, up to the time you left there you made any representation to her of any kind in regard to this deed being an oil and gas lease; that Bell wanted to take an oil and gas lease? A. No, sir.

Q. Was anything said about leasing the land at all in your conversation to her? A. For Mr. Bell?

Q. Was anything said about leasing it to anyone else at that time?

A. I don't believe there was, I was going after her again for Mr. Buell.

Q. And you afterwards went after her for Mr. Buell?

A. Yes, sir, and brought her here.

Q. How long after the Bell transaction was that?

A. It wasn't very long, it must have been a couple of weeks.

Q. At that time was there an oil and gas lease taken for Buell? A. Yes, sir.

Q. At that time was there an oil and gas lease taken for Buell? A. Yes, sir.

Q. Do you know what became of Annie Francis after you left her, that morning; did you see her any more that day or the next day? A. No, sir.

Q. The next time you saw her was when you went after her for Buell? A. Yes, sir.

Q. Did you bring her to Muskogee for Buell? A. Yes, sir.

Q. Do you know whether or not she executed a lease for him or him or any of his companies?

A. Yes, sir, she made a lease in Buell's office and came to the agent's office.

Q. Where was Buell's office?

A. The Phoenix Building, across the street.

Q. And you brought her from there to the Indian Agent's office? A. Yes, sir.

Q. You came with her to the Indian Agent's office?

A. I think I did.

Q. Mr. Stidham, do you remember the hearing on the matter of the approval of that lease in the Indian Agent's office, about a year ago? A. Yes, sir.

Q. Do you know whether Annie Francis was there at the time. A. Yes, sir, she was there.

Q. Do you know whether or not the agent advised her and informed her at that time and informed Mr. Buell that the royalty in that lease—the bonus I mean—the bonus in that lease has been increased? [A.] No, sir.

Q. You don't remember about that? A. No, sir.

Cross Examination by Mr. League.

Q. What time of day did you say it was that you got out to Annie Harris' place when you went after her?

A. Well, it must have been between six and seven o'clock. It was about thirteen miles northwest of Bixby and I left Bixby about four o'clock.

Q. Did you spend the night there? A. No, sir.

Q. What time did you leave, coming here?

A. As soon as she got ready; she brought one of her children with her.

Q. Where did you spend the night?

[A.] At the hotel at Bixby.

A. And went to Okmulgee the next morning? A. Yes, sir.

Q. On the morning train; what time did you get there?

A. It must have been eight o'clock anyhow. The train goes on south.

Q. What time did you leave Okmulgee coming to Muskogee?

A. I left at nine o'clock I think, I don't remember the time of the train.

Q. You were in Okmulgee about an hour?

A. Something like that, yes, sir.

Q. How long were you in the office at Moore and Noble?

A. I don't know, sir, I went over to Moore & Noble's office the lady wasn't there and Mr. Moore came right down and fixed up a deed and I went right on.

Q. Did you see the paper that he fixed up? A. Yes, sir.

Q. You examined it did you?

[A.] Yes, sir, I looked over it.

Q. How did you come to look over it, are you a lawyer?

A. No, sir, I am not a lawyer.

Q. What is your business? A. Oil leasor.

Q. You mean you get them for somebody else?

A. I have some and get some too.

Q. You looked over the instrument and saw that it was a deed? A. Yes, sir.

Q. Were any other papers drawn at that time?

A. Not that I know of. Not to my knowledge.

Q. What did you say to Annie Francis when you went out there, what was the conversation between you and her?

A. I told her that Mr. Bell wanted her to come to Okmulgee, he wanted to buy her interest in that land of her child's and wanted her to sign the deed at Okmulgee.

Q. Who was present at the time of that conversation?

A. I don't know that anybody else was except her and myself.

Q. You state that you talked to her and told her that Mr. Bell wanted her to come to Okmulgee that he wanted to buy her interest in the child's land? A. Yes, sir.

Q. You were out to her place about a week subsequent to that? A. Something about that time.

Q. Who was you going for at the time you went this time?

A. For Mr. Buell.

Q. What for?

A. To get her to come down here for a lease.

Q. To make an oil lease? A. Yes, sir.

Q. Did you say that to her? A. Yes, sir.

Q. She had already, at your instance, made a deed to Bell? A. Yes, sir.

Q. Now, you were taking an oil lease on the same land?

A. Yes, sir.

Q. You took her directly to Mr. Buell's office in Muskogee? A. Yes, sir.

Q. Did you afterwards go with her to the County Court?

A. No. sir.

Q. Were you present with her in the County Court when the deed to Mr. Bell was approved? A. No, sir.

Q. Is that all you said to her about this— that Mr. Bell wanted her to come to Okmulgee to get a deed?

A. That is all that I remember of, yes, sir.

Q. Did you state to her the price she was to have?

A. I don't think I did; I don't think I knew what the price was.

Q. Was there any discussion between you and her as to what her interest was in the land?

A. No, sir, I didn't know what interest she had.

Q. Did you make any inquiry about that. A. No, sir.

Q. You simply said that Mr. Bell wanted her to come to Okmulgee to get a deed to that land?

A. He simply wanted to buy the land.

Q. Without any demurrer or question she came?

A. Yes, sir.

Q. She didn't ask what she was to have or anything about it? A. Yes, I told you that a while ago.

Q. Didn't ask what it was for?

A. I told her what I wanted with her.

Q. Did she discuss with you at that time the price that you were to pay her?

A. I don't think she did; she might have and I might have told her, I don't remember.

Q. How long were you there? A. When?

Q. At her place?

A. I don't know, I wasn't there over an hour, if I was there that long. Wasn't there very long.

Q. Most of that time was spent by her in getting ready to go? A. Yes, sir.

Q. And very little was said about the transaction itself?

A. Very little; I told her what I wanted with her.

Q. She talks the English language, doesn't she?

A. Yes, very good.

Q. You say that you act as interpreter?

A. No, sir, I didn't say that.

Q. You frequently so act as go-between in dealing with these Indians? A. No.

Q. You don't often act in that capacity? A. No.

Q. Did you ever do so?

A. You might explain that a little more; go-between, what do you have reference to?

Q. Well do you ever act as a man sent out by persons desiring to get the interest of the Indians in land? A. No, sir.

Q. You never act in that capacity?

A. That is the only one that I ever went out to get a deed in my life.

Q. And you never went to get a deed for anyone else?

A. No, sir, I don't handle any real estate and don't deal in it at all.

Q. Do you frequently have dealings with the Indians for other persons? A. Oil leases, I do, yes sir.

Q. Oil leases? A. Yes, sir.

Q. And you are paid for your services, are you?

A. Yes, sir.

Q. And that is your business? A. Yes, sir.

Witness dismissed.

By Mr. Gibson: That is the defendant Bell's case.

By the Court: Is there any other proof in this case?

By Mr. League: The plaintiff will call Mr. Fox in rebuttal.

And thereupon evidence is offered on behalf of the plaintiff as follows:

W. W. FOX being called and first duly sworn testifies as follows:

Direct Examination by Mr. League.

Q. State your name to the court. A. W. W. Fox.

Q. Where do you live Mr. Fox? A. I live in Tulsa.

Q. Where were you living at the beginning of the year, 1913? A. Bixby.

Q. Have you bought and sold and dealt in considerable land and oil leases in Tulsa County? A. Some, yes, sir.

Q. Do you know the land in controversy in this action, section seventeen, township fourteen, range eleven?

A. I know all of it.

Q. Do you know the market value of that land in that vicinity? A. I did at that time, yes, sir.

Q. Do you know the 160 acres that is embraced in the allotment to the heirs of Freeland Francis? A. Yes, sir.

Q. What in your information was that land worth on the 27th of February, 1913? A. $20,000.00.

Cross Examination by Mr. Gibson.

Q. Do you know of any lands selling for anything like that price in that neighborhood at that time? A. At that time?

Q. Yes.

A. I knew of a lease selling for that and more too.

Q. In that neighborhood? A. Farther off than this.

Q. Farther off than this? A. Yes, sir.

Q. How close to this land? A. That oil well?

Q. No, listen to me, how close was the land on which the lease sold on the 27th of February, 1913, was the land that sold for Twenty Thousand Dollars?

A. They were offering the leases at that price.

Q. You couldn't get any leases at all? A. No, sir.

Q. Nobody would sell them? A. No, sir.

Witness dismissed.

By the Court: Is that all, gentlemen?

By Mr. League: Yes, sir.

By the Court: Is that all of the oral testimony in this case?

By Mr. Merwine: The oral testimony by the plaintiff.

By the Court: And for the defendant Bell—if there is any further documentary proof I will take it.

By Mr. Lamb: The defendant Gill offers certified copy of a deed from Harold H. Brown and wife to Harry F. Eagan and one from Jennie Orlando Mitchell to Harold H. Brown and one from Harry F. Eagan to E. W. Gill.

By the Court: If there is no objection, it may be admitted.

By Mr. Hiatt: The defendant, Gertrude Womack, offers in evidence certified copy of the deed referred to in the stipulation as the deed executed by Mack Francis to Maud Mitchell to the land in question and dated April 9th, 1910.

By the Court: It may be admitted.

By Mr. Hiatt: If the court please, also the stipulation recited that the roll card as Mack Francis might be

introduced and read in evidence. I think that is attached to the stipulation also.

By the Court: If attached to the stipulation it is in evidence. In argument my attention may be called to it. Is there any other documentary evidence in this case.

By Mr. Matthews: If it please the court, we want to ask Mr. Shulthis a question or two.

By the Court: Alright, call Mr. Shulthis.

And thereupon A. W. SHULTHIS being called and first duly sworn testified as follows:

Direct Examination by Mr. Matthews.

Q. State your name?

A. Albert W. Shulthis, Independence, Kansas.

Q. Are you one of the defendants in this case designated as A. W. Shulthis? A. Yes, sir.

Q. Are you the lessee under a certain oil and gas mining lease referred to in the agreed statement of facts and having been executed by H. L. Lightsey and father to A. W. Shulthis of Independence, Kansas? A. Yes, sir.

Q. I will ask you who is in possession of the land in controversy? A. I am.

Q. Freeland Francis allotment? A. I am.

Q. When did you go into possession?

A. About the 11th day of April, 1913.

Q. Have you put any improvements of any kind upon the land? A. Yes, sir.

Q. State what they are.

A. We drilled seven wells upon the forty and the 120 acres.

Q. How much money have you expended in developing the property? A. $37,966.16 up to May 1st.

Q. Under what instrument did you go into possession of this land? A. Under the——

By Mr. Gibson: To which the defendant Bell objects as calling for conclusion.

By the Court: Yes, the instruments will be in evidence, I take it.

By Mr. Matthews: Yes, sir.

Q. Have you been in possession of this land at all times ever since you first went into possession on about April 13th, 1913? A. Yes, sir, I think so.

Q. How much oil has been produced off of this land?

A. Well, $20,394.20 worth of oil up to May 1st, 1915.

Q. Did you sell that at the prevailing market price?

A. Yes, sir.

Q. Have you any oil in storage at this time?

A. No, I would say not. Probably a tank or two.

Q. Well, about how many barrels.

A. Not over 300 barrels.

Q. What is the present value of oil? A. Forty cents.

Q. That is the value of the oil on the premises at this time, the market value? A. Yes, sir.

By the Court.

Q. What is the present production of that property?

A. Why, it is pretty hard to tell, not over eight or ten inches; that would be twenty or twenty-five barrels.

Q. From the seven wells?

A. One of them is a gas well and the other four are producing wells. The others were dry holes.

Q. Four producing wells producing in all about twenty-five barrels a day? A. Yes, sir, and two dry holes and one was a gas well.

Q. The dry holes are not doing very much?

A. Not very much.

By Mr. Matthews.

Q. Mr. Shulthis, have you sold any gas from off the premises?

A. No, sir; well, I can't hardly say we have sold probably a hundred dollars' worth of gas off of the premises. The Prairie Oil & Gas Company have a lease which they pay us a dollar a day when they pump; they pump about two days out of a month. I think the check last month was $3.00.

Q. You say a hundred dollars will cover all of the receipts you obtained from the gas well? A. Yes, sir.

Q. Has there been any market for that gas?

A. No, I have made numerous attempts to dispose of it. The Oklahoma National Gas Company have the only line in that field and they also have gas wells of their own which they are drawing from and so far, they have refused to purchase any of this gas.

By Mr. Ramsey: If the court please, I think it is competent to ask this witness if he entered into possession and operated this property under this lease.

By the Court: Well, now he entered into possession he says he entered in at a certain time; there will be in evidence here various instruments, one or more, under which he claims. I think I will have to determine probably, eventually whether—let him answer the question.

By Mr. Ramsey.

Q. Did you enter into possession under this lease?

A. Yes, sir.

Q. Oil and gas lease—— A. Yes, sir.

Q. Have you paid any royalties under that lease to anybody?

A. No, sir, the royalties are held up awaiting the determination of this suit with the Prairie Oil and Gas Company.

Q. The royalties are on deposit with the Prairie Oil and Gas Company?

A. On deposit with the Prairie Oil and Gas Company.

By Mr. Lamb.

Q. You stated that the total investment of the property is about $37,000.00? A. Yes, sir.

Q. That is invested in the seven wells?

A. The construction account is $31,861.52 which was the actual cost of the construction; drilling the wells and equiping them as well as drilling dry holes. Cost of operation including the power, etc., $6104.63.

Q. Do you have power on the property?

A. Yes, sir, we have a mascot power.

Q. I believe you said that you had one gas well, two dry holes and four producers? A. Yes, sir.

Q. Was the cost of drilling those seven wells approximately the same? A. The same, yes, sir.

Q. It cost just about to drill one well as it did another?

A. Yes, sir excepting this, when you drill a dry hole you have your casing and also save your rigs; the rigs are still standing over the drilling wells.

Q. You included the cost of the rigs in this estimate?

A. Certainly.

Q. The $31,000.00 I believe you said represented the cost of drilling the seven wells? A. Yes, sir.

Q. And the cost of any one well could be ascertained approximately by dividing that $31,000.00 by seven?

A. As to any one well the best way would be to have the books here and I could tell the cost of any particular well.

Q. You have the cost of each well separately?

A. Yes, sir.

Q. Would you be willing to furnish us the statement of each well separate? A. Yes, sir.

Q. Would you be willing to furnish us a statement of the amount itemized? A. Yes, sir.

Cross Examination by Mr. League.

Q. Mr. Shulthis, this land is in two separate tracts, isn't it? A. Yes, sir.

Q. Now it is the forty acres on which all of the wells have been drilled? A. Except a gas well.

Q. You drilled a gas well on the 120 acres? A. Yes, sir.

Q. When did you do that?

A. Well, I haven't the date with me.

Q. Could you approximate the date?

A. I don't believe I could without the record.

Q. It is within the last twelve months?

A. Well, I would say it was longer than that.

Q. Longer ago than that. A. Yes.

Q. You don't know about that?

A. Why last Summer I took possession by selling gas to the Oklahoma Natural and we had the well there some months prior to that.

Q. You had possession of that land up to that time did you? A. Sir?

Q. You had possession of the land up to that time?

A. We took possession of those pieces April 11th, 1913.

Q. What actual possession on the hundred and twenty acres?

A. We made our location and hauled in a lot of timbers.

Q. On the hundred and twenty acres? A. Yes, sir.

Q. It is true, isn't it Mr. Shulthis, that you had some producing wells on the forty acres something like eight or nine months before you hauled these timbers on the other?

A. No, sir.

Q. That is not true? A. No, sir, that is not true.

Q. You testify, as a matter of fact, that you hauled timbers on the hundred and twenty acres the same date?

A. Well practically the same date.

Q. Don't you know a man by the name of Malcomb was there in possession of this land after you took possession?

A. I do not. I never have been on the lease myself.

Q. You are testifying from hearsay as to possession?

A. Well, I presume it would be hearsay and the records of my office.

Cross Examination by Mr. Gibson.

Q. Mr. Shulthis, have you drawn the working interest of the proceeds of this oil from the Prairie Oil & Gas Company?

A. Yes, sir.

Q. Leaving only the royalty interest? A. Yes, sir.

Q. What royalty interest? A. One-eighth.

Q. Was the cost of those dry holes approximately the same as those of the producing wells?

A. Well they would be the same excepting that you would save the pipe and of course you would not shoot a dry hole outside of those two exceptions.

Q. And you pulled the casing, did you? A. Yes, sir.

By Mr. Ramsey.

Q. And also you removed the derrick; I understand you to say that? A. No, but you would remove the derrick.

Q. (Mr. Gibson) On the 13th day of April, 1913, you went over and took possession of this land, were you there in person? A. No, sir.

Q. What did you do with our man Crawford when you took possession? A. I don't know that we found him there.

Q. Don't know? A. No, sir.

Q. You don't know anything about what the actual condition was after possession when you went down there?

A. No, I know that we——

Q. You know that you instructed your man to go down and make location?

A. To make location and move the material on the ground.

Redirect Examination by Mr. Matthews.

Q. Mr. Shulthis, you know that your instructions were carried out, do you?

By Mr. Gibson: We object to that.

By the Court: If he knows from only what his man told him that is hearsay.

By Mr. Gibson: He says he wasn't there.

Q. I will ask you if you have drilled all of those wells prior to the institution of this suit?

A. I think so but I don't know when this suit was started, really.

Q. Do you know when you drilled the last well on those premises? A. I don't, just now.

Q. Do you know approximately?

A. Why, I think it was a year ago, that would be approximately the facts.

Witness dismissed.

By the Court: Is there any further oral evidence, gentlemen?

By Mr. Gibson: No, sir.

By the Court: I will pass this case over until two o'clock this afternoon for argument.

By Mr. Merwine: If the court please, in this action we are depending largely upon the date of the death of the allottee and the place of his death and the power of the court to approve these deeds in Muskogee County and Okmulgee County and we were taken somewhat by surprise on the time and date of the death of the allottee. While we are here to argue this question on the part as to whether or not the Arkansas laws of descent and distribution—distribution under the Arkansas law—and we are taken somewhat by surprise on the other question; while we can argue it, we would like to have the court, if the court will, to take the law question on briefs and let us be permitted to present our question and give us a little more time on that.

By the Court: Well I will say frankly to you gentlemen that it is very doubtful if after all the ramifications of this matter, I will want to decide this whole matter immediately after the oral argument. I will probably want to take some time. I apprehend that all you gentlemen want to be heard to some extent; I will give you an opportunity for that this afternoon and then determine the question on briefs after that.

This is all the evidence introduced at this hearing.

EXHIBIT "D".

Refer in reply to the following: 1-4244 1

Address only the
Commission of Indian Affairs

Land—

DEPARTMENT OF THE INTERIOR

Sales
51833-1910
B D S
Inherited
land deed.

OFFICE OF INDIAN AFFAIRS, ESS
WASHINGTON,
Jul 20 1910

Received
Jul 25 1910
Union Agency
Dept. No. 2218

F

Department of the Interior
Commissioner to the Five Civilized Tribes
Received Jul 22 1910 W

Dana H. Kelsey, Esq.,
Superintendent Union Agency,
Muskogee, Oklahoma.

(Through the Commissioner to the Five Civilized Tribes.)

SIR: 2218

Referring to your letter of June 17, 1910, there is inclosed an inherited land deed executed by Annie Francis, conveying to Laura McGinnis her interest in the lands allotted to Freeland Francis, deceased, which order was approved by the First Assistant Secretary on July 6, 1910.

The approved deed is transmitted herewith with the papers accompanying your letter of above date for appropriate disposition.

There is also inclosed an order concerning disposal of proceeds executed by Annie Francis, covering an interest in the lands allotted to the deceased.

Very Respectfully,

WM. R. LAYNE,
Acting Chief Land Division.

7-CJI-15
11482

Residence Creek Nation

Post Office Muskogee I.T.

~~Wybark~~ Crowson Act of

Roll No.	Name	Age March 4 1905	Sex	Blood	Name of Father
1070	1 Francis, Freeland	2	M	3/4	William Francis
	~~2 " Elizabeth~~	~~4~~	~~F.~~	~~3/4~~	~~" "~~
	3				
	4				
	5				

For Father's enrollment see Creek Indian ~~Roll~~ Card No.

For Mother's enrollment see Creek " ~~Roll~~ Card No.

Remarks Application for enrollment of No. 1 received April 2
#1 died June 22, 1905.
Application for enrollment of No. 2 received Mch- 4-
Father of #1 & 2 is dead
#2 Transferred to En Case #970. No. 2 enrolled on
Cert issued Dec. 4- 1907

Enrollment of No. 1070 Approved

By Secretary of Interior Oct 15, 1906

NEW-BORN HJW Card No. 819

Creek Nation, Creek Roll.

Act of Congress Approved March 3rd, 1905 (Public No. 212.)

od	Name of Father	Father's Roll No.	Name of Mother	Mother's Roll No.	Born
3/4	William Francis	dead 460	Annie Francis	8304	April 30- 1903
~~3/4~~	~~" "~~	~~460~~	~~" "~~	~~8304~~	~~Nov. 2 1900 (?)~~

Department of the Interior,
Commissioner to the Five Civilized Tribes,
MUSKOGEE, OKLAHOMA

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Creek New Born Indian census card No. 819

Indian Roll Card No. 127

" Roll Card No. 3057

MAR 8- 1913 Muskogee Okla.

1 received April 26- 1905 CHD Ma

2 received Mch- 4- 1905.

No. 2 enrolled on Creek Indian Card Field #4655.

J. G. Wright
Commissioner to the Five Civilized Tribes.
By James C Kennedy
Clerk in charge of Creek Records.

Date June 10, 1905.

Approved Sept. 26, 1906
Tams Bixby
Commissioner.

Ex A"

EXHIBIT "E"

In the County Court in and Dor *Okmulgee County, State of Oklahoma.*

In the Matter of the Guardianship of Amos Francis and Elizabeth Francis, minors, Wm. J. Cook, Grdn.

ORDER CONFIRMING SALE OF REAL ESTATE.

Now on this 15th day of January, 19..2, there coming on for hearing the return of sale made by Wm. J. Cook as guardian of the above named minors, and said guardian appearing in person and by his attorneys, Moore & Noble in support of the confirmation of the sale, and no one appearing in opposition thereto, and the court having examined said return and having heard and considered the evidence of witnesses offered in support of said return, and being fully advised in the premises, finds:

That on the 10th day of October, 1911, the guardian filed his duly verified petition in this cause for an order to sell the wards' interests in the real estate hereinafter described, and that on the said 10th day of October, 1911, there was an order entered in this cause setting the petition for hearing on the 8th day of November, 1911, and directing that notice be given of the hearing by publication for two successive weeks in the Okmulgee Democrat, of Okmulgee Oklahoma, and by posting copies in three public places in Okmulgee County, and that said notice was given as will appear from the proof of publication filed herein, and from the proof of posting the notices, and that copies of the order for hearing were mailed to Annie Francis the next of kin and person interested in the estate, with postage prepaid thereon, as will more fully appear from the proof filed herein, and the proof of publication and proof of posting and proof of mailing copies of the order, are referred to herein, and made a part hereof; that on the 8th day of November, 1911, a decree of sale was entered herein authorizing and directing the guardian to sell the wards' interest in the hereinafter described real estate at public sale, and that the guardian in pursuance of the order of sale entered herein, give notice that he would, on the 2nd day of December, 1911, at ten o'clock in the forenoon, at the north front door of the council house in Okmulgee, Oklahoma, sell at public sale, to the highest bidder the wards' interests in and to the land described in

said notice, and petitioned to be sold and that on the 8th day of November, 1911, he caused a copies of the notice of sale to be posted in three public places in Okmulgee County, and he also caused a copy of the notice to be published in the Okmulgee Democrat, for three consecutive weeks, in the issues of November 16th, November 23rd and November 30th, 1911, proof of posting notices and proof of publication in the news paper being filed in this cause, and which are referred to herein and made a part hereof; that in pursuance to the order of sale and the notices given of the sale, the said Wm. J. Cook guardian of the above named minors, did on the 2nd day of December, 1911, at the time, place and hour in said notices set out, sell the following described real estate, to-wit:

> All the wards' interests in and to the Northeast Quarter of the Southeast Quarter and the South Half of the Southeast Quarter of Section Twenty-five (25) and the Southeast Quarter of the Southwest Quarter of Section Twenty-six (26) all in Township Sixteen (16) North Range (13) East in Okmulgee County, Oklahoma,

at public sale to H. L. Lightsey and John Taylor, for the sum of $280.00 payable cash in hand upon confirmation of the sale and execution and delivery of deed therefor.

That said sale was made after due notice as prescribed by said order of sale; that said purchaser was the highest bidder therefor, and said sum the highest and best sum bid; that said sale was legally made and fairly conducted; that said sum is not disproportionate to the value of the property sold, and that a sum exceeding such bid at least ten per cent exclusive of the expense of a new sale cannot be obtained, and that the said Wm. J. Cook in all things proceeded and conducted and managed such sale as required by the statute in such case made and provided, and as by said order of sale required and directed.

It is therefore ordered, adjudged and directed by the court, that the said sale, be and the same is hereby confirmed and declared valid, and the said Wm. J. Cook is directed to execute to said purchaser proper and legal conveyance of said real estate.

(Seal) (Signed) GEO. A. JOHNS,
County Judge.

State of Oklahoma, Okmulgee County—ss.

I, W. F. Preddy, Court Clerk of the County Court, in and for the county and state aforesaid, do hereby certify that the instrument hereunto attached is a full, true and correct copy, "Order Confirming Sale of Real Estate *in re* Elizabeth & Amos Francis, minors, as the same now appears of record and file in this office.

Witness my hand and the seal of said court at Okmulgee, Oklahoma, on the 22nd day of May, 1915.

W. F. PREDDY,
Court Clerk.

(Seal)

By E. V. CATT, *Deputy.*

EXHIBIT .....

GUARDIAN'S DEED.

This Indenture Made the 22nd day of January, nineteen hundred and twelve at Muskogee, Muskogee County, State of Oklahoma, by and between Wm. J. Cook, the duly appointed, qualified and acting curator of the estate of Elizabeth Francis and Amos Francis, minors, party of the first part and H. L. Lightsey and John Taylor, the parties of the second part,

Witnesseth, That Whereas, on the 8th day of November, 1911, the County Court within and for the County of Okmulgee, State of Oklahoma, made an Order of sale, authorizing the said party of the first part to sell certain real estate of the said Elizabeth Francis and Amos Francis, situated in the County of Okmulgee, State of Oklahoma, described in said Order of Sale,

And Whereas, under and by virtue of said Order of Sale, and pursuant to legal notices given thereof, the said party of the first part, on the 2nd day of December, A. D. nineteen hundred and eleven sold the hereinafter described real estate specified and described in said Order of Sale, subject to confirmation by said court, for the sum of Two Hundred and Eighty ($280.00) Dollars, they being the highest and best bidders, and that being the highest and best sum bid.

And whereas, the said County Court, upon the due and legal return of the proceedings under the said Order of Sale, made by the said party of the first part on the 8th day of No-

vember, A. D. 1911, did on the 15th day of January, 1912, make an order confirming said sale, and directing conveyances to be executed to the said parties of the second part, a certified copy of which order of confirmation was recorded in the office of the Register of Deeds of said Okmulgee County, within which the said land sold is situated on the 15th day of January, A. D. 1912, in Book M 63 on page 606 and which said order of confirmation now on file and of record in said County Court, and which said record thereof in said Register of Deeds' office are hereby referred to and made a part of this indenture.

Now, Therefore, the said Wm. J. Cook, as the curator of the estates of said Elizabeth Francis and Amos Francis, minors, as aforesaid, the party of the first part, pursuant to the order last aforesaid of the said County Court, and for and in consideration of the sum Two Hundred Eighty ($280) Dollars to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns forever all the right, title, interest and estate of the said Elizabeth Francis and Amos Francis, in and to all the certain lot, piece or parcel of land, situated, lying and being in said County of Okmulgee, State of Oklahoma, and bounded and particularly described as follows, to-wit:

The North East Quarter of the South East Quarter and the South Half of the South East Quarter of Section Twenty-five (25), and the South East Quarter of the South West Quarter of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East of the Indian Base and Meridian, together with the tenements, hereditaments and appurtenances whatsoever to the same belonging or in anywise appertaining.

To Have and to Hold, all and singular, the above mentioned and described premises, unto the said parties of the second part, their heirs and assigns forever.

In witness whereof, the said party of the first part, guardian as aforesaid, has hereunto set his hand the day and year first above written.

Signed and delivered in presence of

WM. J. COOK.

State of Oklahoma, Muskogee County—ss.

Be It Remembered, That on this 22 day of January, A. D. 1912, before me, A. G. Cochran, a notary public within and for said county and state, personally appeared Wm. J. Cook, as the curator of Elizabeth Francis and Amos Francis, minors, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated as his free and voluntary act and deed for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and official seal, at said county, the day and year last above written.

(Seal) A. G. Cochran,

My commission expires 2/9, 1912. Notary Public.

CERTIFICATE OF TRUE COPY.

State of Oklahoma, Okmulgee County—ss.

I, W. B. Rennells, clerk of the County Court in and for the county and state aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of order confirming sale of real estate, in Probate Case No. 868 in the matter of the Guardianship of Amos Francis and Elizabeth Francis, minors, as the same now appears of record and on file, in this office.

Witness my hand and seal at Okmulgee, Oklahoma, this 15th day of January, 1912. W. B. RENNELLS,

(Seal) *Clerk of the County Court.*

DEPARTMENT OF THE INTERIOR

Washington, D. C.

Pursuant to the Act of April 26, 1906 (34 Stat. L. 137), this deed is hereby approved in so far as it operates to convey the right, title and interest of Elizabeth Francis and Amos Francis as full-blood Indian heirs, in and to the within described lands allotted to Freeland Francis, a citizen of the Creek Nation, Roll No. N. B. 1070 (who appears to have died prior to May 27, 1908), but without prejudice to the right, if any, of any other heir of said allottee.

.....

First Assistant Secretary of the Interior.

Order filed for record January 15, 1912, and recorded in Book M-63 at page 606, of Register of Deeds of Okmulgee County.

EXHIBIT .....

RECORD UNITED STATES COURT, WESTERN DISTRICT.

Monday, March 25, 1907.

Court met pursuant to adjournment, Present the Hon. WILLIAM R. LAWRENCE, Judge presiding and Court being opened in due form of law, the following proceedings are had, to-wit:

In re Estate of Freeland Francis, Dec'd, Wm. J. Cook, Adm. —No. 2074 U. S.

Now comes Wm. J. Cook and presents his petition for appointment as administrator herein, filed March 22, 1907, with waiver of next of kind and bond in the sum of $250.00, and upon hearing, examination and advisement, the court doth appoint said William J. Cook, administrator herein and approve said bond, and

It is ordered that letters of administration issue to him herein.

Hereupon court adjourned until tomorrow.

(Recorded in Probate Record "E", page 245.)

United States Court for the Western District of Indian Territory, at Muskogee. Estate of Freeland Francis, Deceased. —No. 2074 U. S.

United States of America, Indian Territory, Western ..... District—*ss.*

BOND OF ADMINISTRATION.

We, William J. Cook as Principal, and Philip B. Hopkins and W. E. Gordon, as Sureties, acknowledge ourselves to be indebted to United States in the sum of Two Hundred and Fifty ($250.00) Dollars.

The condition of the above obligation is such, that if the above bounden William J. Cook, Administrator of all and singular the goods and chattels, rights and credits of Freeland Francis, deceased, shall make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels,

Residence: _____ CREEK ~~Okl. Ter.~~ NA

Post Office: Muskogee, Ind. Ter

Dawes' Roll No.		Name	Relationship to person first Named.	AGE.	SEX.	BLOOD.	
452	1	Francis, Jeff		37	M	3/4	1
453	2	" , Mack	Cousin	10	"	1/2	1
	3						
	4						
	5	ENROLLMENT					
	6	of Nos. 452 & 453 hereon					
	7	APPROVED BY THE SECRETARY					
	8	OF INTERIOR March 13, 1902.					
	9						
	10						
	11	CITIZENSHIP CERTIFICATE ISSUED					
	12	April 6th 1899					
	13						
	14						
	15						
	16						
	17						
	18						

CREEK NATION — ~~CHEROKEE~~ CREEK ROLL

Card No. 125

Field No. 125

nship	AGE.	SEX.	BLOOD.	TRIBAL ENROLLMENT Year.	District.	No. Page	TRIBAL ENROLLMENT OF PARENTS Name of Father.	Year.	District.	Name of Mother	Year	District.
rson t d.												
	37	M	3/4	1890	Hickory Ground	124	John Francis	1890	Hickory Ground	Louisa Francis	Dead	Euchee
in	10	"	1/2	1890	" "	124	William Francis	1890	" "	Silla Francis	"	Hickory Ground

hereon
CRETARY
13, 1902.

TE ISSUED
99

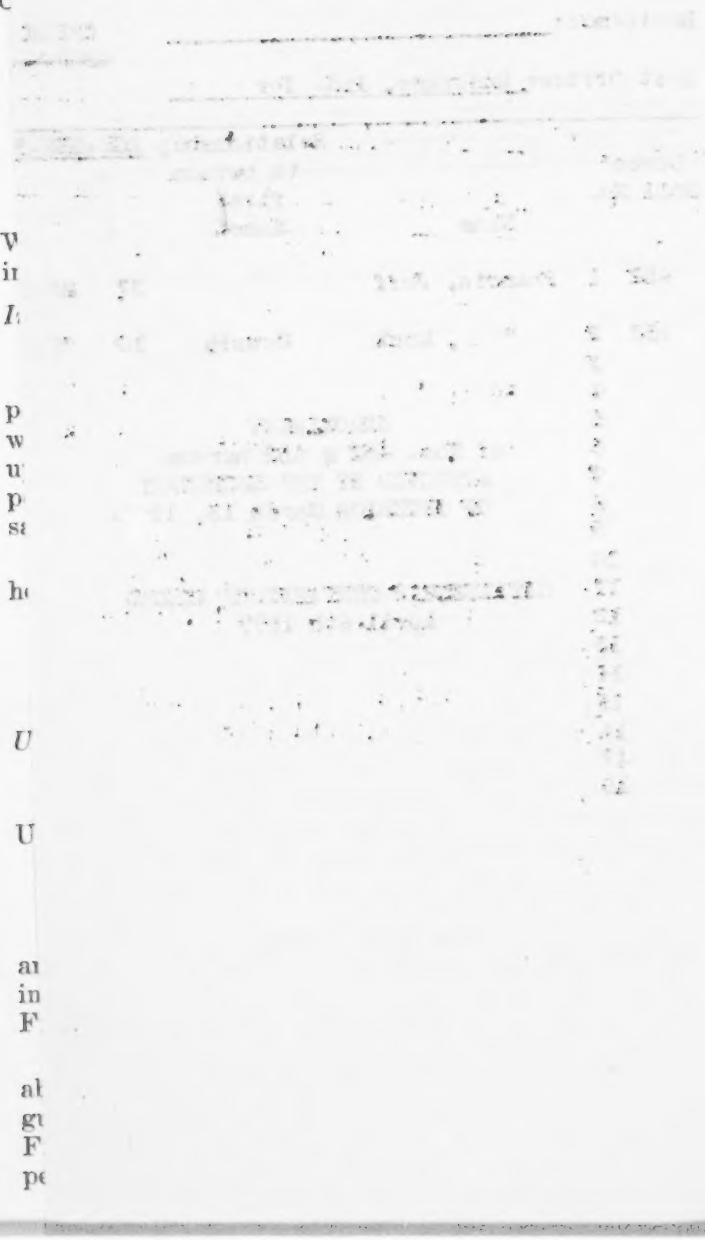
No. 1, husband of Sarah Francis, Freedman Card, Field No. 1361
No 1 also on Euchee Town Census Roll of 1895; 1896 pay roll of Euchee Town #138.
No 2 also on Hickory Ground " " " 1895; 1895 pay roll #237 H G Town
11/13/03 No. on 1890 Euchee roll, P. 98 (E.43)
For child of No. 1 see N. B. (Apr. 26, 1906) Card #237 Freedman.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Creek Indian census card No. 125

J. Geo Wright
Commissioner to the Five Civilized Tribes,
By Hal Belford, Clerk.

JUL 19 1907

April 6/99



rights and credits of the deceased, which have or may come to the hands, possession or knowledge of him, the said William J. Cook, or into the hands or possession of any other person for him, and the same so made shall return and exhibit in the office of the clerk of the court of probate in the Western District of the Indian Territory, within sixty days of the date of the above obligation, and all and singular the goods and chattels, rights and credits of the deceased, which shall come to the hands, possession or knowledge of him, the said William J. Cook, he shall well and truly administer according to law, and pay the debts of the deceased as far as his assets will extend and the law direct; and further, make or cause to be made just and true accounts of his administration, and make due and proper settlements thereof, from time to time, according to law or the lawful order, sentence, or decree of any court having competent jurisdiction, and shall moreover well and truly do and perform all other matters and things touching said administration, that are or may be prescribed by law, or enjoined on such administration by the lawful order, sentence, or decree of any court having competent jurisdiction, then the above obligation to be void and of no effect; otherwise to remain in full force and virtue.

In Witness Whereof, We have hereto subscribed our names and affixed our seals, this 19 day of March, A. D. 1907.

WILLIAM J. COOK, (Seal)
PHILIP B. HOPKINS, (Seal)
W. E. GORDON. (Seal)

United States of America, Indian Territory, Western ..... District—ss.

We, William J. Cook, as Principal and Philip B. Hopkins and W. E. Gordon, Sureties on the within bond, do each of us solemnly swear that we are worth, over and above our indebtedness and all liabilities and exemptions, the respective amounts set opposite our names and that our property is within the Indian Territory:

William J. Cook. $250.00
Philip B. Hopkins. 250.00
W. E. Gordon. 250.00

Subscribed and sworn to before me, this 20th day of March, A. D. 1907.

P. A. Diederich,
Notary Public.

(Seal)
My Commission Expires Jan. 16, 1911.

LETTERS OF ADMINISTRATION.

United States of America, Indian Territory, Western District—ss. *No.* .....

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To All Persons to Whom These Presents Shall Come—Greeting:

Know Ye, That Whereas, Freeland Francis, of the Western District of the Indian Territory, died intestate, as it is said, on or about the 27 day of June, A. D. 1906, having at the time of his death personal property in the Western District of the Indian Territory which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end, therefore, that the said property may be collected, preserved, and disposed of according to law, we do hereby appoint W. J. Cook of said Western District of the Indian Territory, administrator of all and singular the goods and chattels, rights and credits which were of the said Freeland Francis at the time of his death, with full power and authority to dispose of the said property, according to law, and to collect all moneys due the said deceased, and in general to do and perform all other acts and things which are, or hereafter may be required of him by law.

Witness, the Honorable WILLIAM R. LAWRENCE, Judge of the United States Court for the Western District of the Indian Territory, and the seal thereof, at Muskogee, in the Indian Territory, this 25th day of March, A. D. 1907.

R. P. HARRISON, *Clerk.*

(Seal) By D. F. DICKEY, *Deputy.*

CLERK'S CERTIFICATE.

State of Oklahoma, County of Muskogee—ss.

I, C. H. Shaffer, Court Clerk within and for the County and State aforesaid, hereby certify that the above and foregoing is a full, true and complete transcript of the Order appointing administrator; Letters of Administration and Administrator's bond. In the matter of the estate of Freeland Francis, deceased, W. J. Cook, Administrator, as the same remains of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and offixed the seal of the County Court at my office in Muskogee, Oklahoma, this 24th day of May, A. D. 1915.

(Seal) C. H. SHAFFER, *Court Clerk.*

BELL'S EXHIBIT 1.

DEED—GENERAL WARRANTY.

(Okmulgee Democrat Pub. Co.)

This Indenture, Made this 27th day of February A. D. 1913, between Annie Francis of Okmulgee County, in the state of Oklahoma, of the first part and Harry H. Bell of the second part:

Witnesseth: That said party of the first part, in consideration of the sum of Two Hundred Twenty-five ($225.00) Dollars, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto said party of the second part his heirs and assigns, all of the following described real estate, situated in the County of Okmulgee, and state of Oklahoma, to-wit:

The East Half of the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section Twenty-five (25) and the Southeast Quarter of the Southwest Quarter of Section Twenty-Six (26) all in Township (16) North Range Thirteen (13) East.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, forever:

And said Annie Francis for herself her heirs, executors, or administrators, does hereby covenant, promise and agree to and with said party of the second part, that at the delivery of these presents she is lawfully seized in her own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrance of what nature or kind soever and she will warrant and forever defend the same unto the said party of the second part his heirs and assigns, against the said party of the first part her heirs and all and every person or persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, The said party of the first part has hereunto set her hand the day and year first above written.

ANNIE FRANCIS.

Approved Feby. 27th, 1913.
(Seal) MARK L. BOZARTH, *County Judge.*

Appd. Feby. 28, 1913.
(Seal) THOS. W. LEAHY, *Co. Judge Muskogee Co., Okla.*

ACKNOWLEDGMENT.

State of Oklahoma, County of Okmulgee—ss.

Before me, Lena Grubb a notary public in and for said county and state, on this 27th day of February, 1913, personally appeared Annie Francis and to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal the day and year above written.
(Seal) Lena Grubb, Notary Public.
My Commission expires Oct. 21, 1913.

(Endorsed): 30748. Warranty deed from Annie Francis to Harry H. Bell. State of Oklahoma, Okmulgee County—ss. Filed in the office of the Register of Deeds of said County and State, on the 27th day of Feb. 1913, at 10 o'clock 50 minutes A. M., and duly recorded in Book D-85 of deeds at page 90. Fees, $..... Eva Russel, Register of Deeds. (Seal). By ..... Deputy. Return to H. H. Bell, Muskogee, Okla., 515 Barnes Bldg. (Democrat Print Union Label Okmulgee, Okla.) 30797. State of Oklahoma, County of Okmulgee, ss. This instrumen' vas filed for record on the 1st day of Mar. A. D. 1913, at 1 'clock A. M., and duly recorded in Book D-85 of ..... on page 139. Eva Russel, Register of Deeds. (Seal) By ....., Deputy. Fee, $.....

BELL'S EXHIBIT 2.

CERTIFICATE OF TRUE COPY.

State of Oklahoma, Okmulgee County—ss.

I, W. F. Preddy, Clerk of the County Court, in and for the County and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of Order Approving Deed from Annie Francis to Harry H. Bell, In re Fullblood No. 572, as the same now appears of record and file in this office.

Witness my hand and seal at Okmulgee, Oklahoma, this 10th day of December, 1913.

(Seal)

W. F. PREDDY,
Clerk of County Court.
By LIDA COMPTON, *Deputy.*

In the County Court in and for Okmulgee County, State of Oklahoma.

In the Matter of the Application of Annie Francis for the approval of a deed made by her to Harry H. Bell

ORDER APPROVING DEED.

This cause coming on to be heard upon the petition of Annie Francis for the approval of a deed made by her for her interest in the East half of the Southeast quarter and the Southwest quarter of the Southeast quarter of Section Twenty-five (25) and the Southeast quarter of the Southwest quarter of Section Twenty-six (26) Township Sixteen (16) North Range Thirteen (13) East in Okmulgee County, Oklahoma, being the allotment of Freeland Francis, deceased, and it appearing to the court that said Freeland Francis died intestate in the year 1905, single and without issue, in what was then the Creek Nation, Indian Territory, and that at the time of his death he left surviving him as his next of kin Annie Francis the petitioner in this cause, mother, and Mack Francis and Amos Francis brothers, and Elizabeth Francis a sister; that the petitioner herein Annie Francis, is a full blood Creek Indian and so enrolled, and that she made, executed and delivered a deed to Harry H. Bell on the 27th day of February, 1913, in consideration of $225.00 and prays for the approval of the same by this court, and the same having been considered after the evidence is heard, and the court being of the opinion that the interest conveyed by the said Annie Francis to the said Harry H. Bell in consideration of $225.00 should be approved and that the said [$225.00] is and adequate price for interest sold in and to said premises.

It is therefore ordered, adjudged and decreed that the deed made, executed and delivered on the 27th day of February, 1913, conveying the interest of said Annie Francis to Harry H. Bell in and to the East Half of the Southeast Quarter and the Southwest Quarter of the Southeast quarter of Section Twenty-five (25) and the Southeast quarter of the Southwest quarter of section twenty-six (26) in Township sixteen (16) North, Range Thirteen (13) East in Okmulgee County, Oklahoma, be and the same is hereby approved.

Dated this 27th day of February, 1913.

MARK L. BOZARTH,
(Seal) *Judge of the County Court.*

Endorsed: Fullblood No. 572. In the matter of the application of Annie Francis for the approval of a deed made by her to Harry H. Bell. Order approving deed. Filed Feb. 27, 1913, County of Okmulgee, State of Okla. W. F. Preddy, Clerk of County Court. Deed Index Book 2, page 115.

BELL'S EXHIBIT 3.

In the County Court in and for Muskogee County, State of Oklahoma. In the Matter of the Application of Annie Francis for the Approval of a deed made by her to Harry H. Bell.

ORDER APPROVING DEED.

This cause coming on to be heard upon the petition of Annie Francis for the approval of a deed made by her for her interest in the East Half of the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section Twenty-Five (25) and the Southeast Quarter of the Southwest Quarter of Section Twenty-Six (26) Township Sixteen (16) North Range Thirteen (13) East in Okmulgee County, Oklahoma, being the allotment of Freeland Francis, deceased, and it appearing to the court that Freeland Francis died intestate single and without issue in the year 1905 in what was then the Creek Nation, Indian Territory, and that *as* the time of his death he left surviving him as his next of kin Annie Francis the petitioner in this cause, mother, and Mack Francis and Amos Francis, brothers, and Elizabeth Francis, a sister; that the petitioner herein, Annie Francis, is a full-blood Creek Indian and so enrolled, and that she made, executed and delivered a deed to Harry H. Bell on the 27th day of February, 1913, in consideration of $225.00 and prays for the approval of the same by this court, and the same having been considered after the evidence is heard and the court being of the opinion that the interest conveyed by the said Annie Francis to the said Harry H. Bell in consideration of $225.00 should be approved, and the same is an adequate price for the interest sold in and to said premises.

It is therefore ordered, adjudged and decreed that the deed made, executed and delivered on the 27th day of February, 1913. conveying the interest of said Annie Francis to Harry H. Bell, in and to

The East Half of the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section Twenty-five (25) and the Southeast Quarter of the Southwest Quarter of Section Twenty-six (26) Township Sixteen (16) North Range Thirteen (13) East in Okmulgee County, Oklahoma,

be and the same is hereby approved.

Dated this 28 day of February, 1913.

THOS. W. LEAHY,
Judge of the County Court of Muskogee County.

State of Oklahoma, County of Muskogee—ss.

I, C. H. Shaffer, Clerk of the County Court within and for the County of Muskogee, State of Oklahoma, hereby certify that the above and foregoing is a true and correct copy of the order approving deed made in this matter, as the same appears from the records of my office.

In Witness Whereof, I hereunto set my hand and affix the official seal of this Court at Muskogee, Oklahoma, this 28th day of February, 1913.

C. H. SHAFFER,
Clerk of the County Court.

(Seal)

(Endorsed:) 30798 Compared xG No. 1940 In the Matter of the Application of Annie Francis for the Approval of a deed made by her to Harry H. Bell. Order Approving Deed. State of Oklahoma, County of Okmulgee—ss. This instrument was filed for Record on the 1st day of Mar., A. D. 1913, at 10 o'clock A. M., and duly recorded in Book .... of M-83 on page 356. Eva Russel, Register of Deeds. By ..... Deputy. Fee, $..... (Seal) Feturn to H. H. Bell, Muskogee, Okla., 515 Barnes Bldg.

DEFENDANT GILL'S EXHIBIT "A."

From Howell H. Brown and Cora L. Brown to Harry F. Eagan.

32272

WARRANTY DEED.

Know all Men by These Presents:

That Howell H. Brown and Cora L. Brown, his wife, parties of the first part, in consideration of the sum of Twelve Hundred Dollars ($1200.00) in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and

convey unto Harry F. Eagan, the following described real property and premises situate in Okmulgee County, State of Oklahoma, to-wit:

An undivided half interest in and to the South Half (S½) of the Southeast Quarter (SE¼) and the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section Twenty-five (25) and the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of Section Twenty-six (26) all in Township Sixteen (16) North, Range Thirteen (13) East of the Indian Base and Meridian, together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, his heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature.

Signed and delivered this 5th day of Oct. 1912.

HOWELL H. BROWN, (Seal)

CORA L. BROWN, (Seal)

ACKNOWLEDGMENT.

State of Oklahoma, Muskogee County—ss.

Before me, a notary public in and for said County and State, on this 5th day of Oct., 1912, personally appeared Howell H. Brown and Cora L. Brown, his wife, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal as such notary public on the day last above mentioned.

(Seal) Elina E. Klein, Notary Public.

My commission expires July 11th, 1913.

This instrument was filed for record on the 1st day of May, A. D. 1913, at 9:10 o'clock A. M., and duly recorded the 1st day of May, 1913.

(Seal) EVA RUSSEL,

Register of Deeds, Okmulgee Co., Okla.

CERTIFICATE OF TRUE COPY.

State of Oklahoma, Okmulgee County—ss.

I, C. W. Goree, County Clerk, in and for the County of Okmulgee, State of Oklahoma, duly qualified and acting as such, do hereby certify that the foregoing is a full, true and complete copy of a warranty deed from Howell H. Brown and Cora L. Brown to Harry F. Eagan filed for record in my office on the 1st day of May, 1913 at 9:10 A. M. and duly recorded in record D-76 on page 263 as the same now appears from the said record in my office.

Witness my hand and official seal at Okmulgee, Oklahoma, this the 24th day of May, 1915.

(Seal)

C. W. GOREE,
County Clerk in and for the County of Okmulgee, State of Oklahoma.
By J. M. CAMPBELL, *Deputy.*

DEFENDANT GILL'S EXHIBIT "B".

From J. Orlando Mitchell to Howell H. Brown. 25830.

WARRANTY DEED.

Know All Men by These Presents:

That J. Orlando Mitchell, a single man of Muskogee, Oklahoma, party of the first part, for and in consideration of the sum of Twelve Hundred ($1200.00) Dollars in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto Howell H. Brown, party of the second part, the following described real property and premises, situate in Okmulgee County, Oklahoma, to-wit:

An undivided half interest in and to the South half of the Southeast Quarter and the Northeast Quarter of the Southeast Quarter of Section Twenty-five, and the Southeast Quarter of the Southwest Quarter of Section Twenty-six, all in township Sixteen North and Range Thirteen East of the Indian Base and Meridian, together with all the improvements thereon and the appurtenances thereunto belonging and warrant the title to the same.

To have and to hold said described premises unto the said Howell H. Brown, heirs, successors and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature except.....

Signed and delivered this 1st day of May, 1912.

J. ORLANDO MITCHELL. (Seal)

State of Oklahoma, Muskogee County—ss.

Before me, J. S. Thomas, a notary public in and for said state and county, on this 1st day of May, 1912, personally appeared J. Orlando Mitchell and .. to me known to be the identical person who executed the above and foregoing warranty deed, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth, and I hereby so certify.

Witness my hand and seal as such notary public at Muskogee, Oklahoma, this 1st day of May, 1912.

(Seal) J. S. Thomas,

My commission expires Feby. 14, 1915.

This instrument was filed for record on the 3rd day of May, A. D. 1912, at 1:00 o'clock P. M. ....., Register of Deeds.

CERTIFICATE OF TRUE COPY.

State of Oklahoma, Okmulgee County—ss.

I, C. W. Goree, County Clerk, in and for the County of Okmulgee, State of Oklahoma, duly qualified and acting as such, do hereby certify that the foregoing is a full, true and complete copy of Warranty Deeds from J. Orlando Mitchell to Howell H. Brown filed for record in my office on the 3rd day of May, 1912, at 1 P. M. and duly recorded in record D39 on page 588 as the same now appears from the said record in my office.

Witness my hand and official seal at Okmulgee, Oklahoma, this the 24th day of May, 1915.

(Seal) C. W. GOREE,

County Clerk in and for the County of Okmulgee, State of Oklahoma.

By J. M. CAMPBELL, *Deputy.*

DEFENDANT GILL'S EXHIBIT "C."

QUIT CLAIM DEED.

(Okmulgee Democrat Pub. Co.)

This Indenture, Made this 9th day of May, A. D. 1913, between Harry F. Eagan, of Muskogee County, in the State of

Oklahoma, of the first part, and Eugene W. Gill of the second part;

Witnesseth: That the said party of the first part, in consideration of the sum of Twenty-five and no/100 Dollars, the receipt whereof is hereby acknowledged, has demised, released, conveyed and quit-claimed, and by these presents does quit-claim unto said party of the second part his heirs and assigns, all his right, title, interest, estate, claim and demand both at law and in equity in and to all of the following described real estate situate in the County of Okmulgee and State of Oklahoma, to-wit:

> The Southeast quarter of the Southwest quarter of Section Twenty-six (26) and the East half of the Southeast quarter and the Southwest quarter of the Southeast quarter of Section Twenty-five (25), all in Township Sixteen (16) North, Range Thirteen (13) East in Okmulgee County, Oklahoma, the same being the allotment of Freeland Francis, deceased, and never having been any part of my homestead and never having been occupied by me as a home or homestead;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging;

To have and to hold the above described premises unto the said Eugene W. Gill heirs and assigns; so that neither the said Harry F. Eagan nor any person in my name and behalf shall or will hereafter claim or demand any right or title to the said premises or any part thereof, but they and every one of them shall by these presents be excluded and forever barred.

In Witness Whereof, the said party of the first part has hereunto set his hand the day and year above written.

HARRY F. EAGAN.

ACKNOWLEDGMENT.

State of Oklahoma, Muskogee County—ss.

Before me Elina E. Klein, a notary public and for said county and state, on this 13th day of May, 1913, personally appeared Harry F. Eagan and to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal the day and year above written.
(Seal) Elina E. Klein, notary public.
My commission expires July 11, 1913.

(Endorsed): 41-32555-G. Quit Claim Deed from Harry F. Eagan to E. W. Gill, city. State of Oklahoma, Okmulgee County, ss. Filed in the office of the Register of Deeds of said county and state, on the 15 day of May, 1913, at 9 o'clock 0 minutes, A. M., and duly recorded in Book M-77 of deeds at page 307. Fees, $..... Eva Russel, Register of Deeds. By ....., Deputy. Compared. (Seal) (Democrat Print, Okmulgee, Okla.)

DEFENDANT WOMACK'S EXHIBIT "A."

From Mack Francis to Maud Mitchell 14414

WARRANTY DEED.

Know All Men By These [P]resents, That Mack Francis, a single man, of Tullahasse, Oklahoma, in consideration of the sum of One Dollar and other good and valuable considerations, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto Maud Mitchell, of Muskogee, Oklahoma, the following described real property and premises, situate in Okmulgee County, State of Oklahoma, to-wit:

An undivided one-half interest in and to the Northeast quarter of the Southeast quarter and the South half of the Southeast quarter of Section Twenty-five, and the Southeast quarter of the Southwest quarter of Section Twenty-six, Township Sixteen North, Range Thirteen East, This being the allotment of Freeland Francis, (deceased), a new-born Creek Indian, whose Roll Number is 1070 and brother of said grantor.

A one-half interest in and to the Northwest quarter of Section Eleven, Township Fifteen North, Range Fourteen East. This being the allotment of William Francis (deceased), a Creek Indian whose Roll Number is 460, and father of said grantor,

Together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To Have And To Hold said described premises unto the said Maud Mitchell, his heirs and assigns forever, free, clear

and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature, except, no exceptions.

Signed and delivered this 9 day of April, 1910.

Witness to signature:
R. B. D. Frantz,
J. Orlando Mitchell.

MACK FRANCIS.

State of Missouri, Jackson County—ss.

Before me, E. M. Smith, a notary public in and for said county and state, on this 9 day of April, 1910, personally appeared Mack Francis, a single man to me known to be the identical person who executed the within and foregoing warranty deed, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal as such notary public, at Kansas City, Missouri, this 9 day of April, 1910.

(Seal)

E. M. Smith, notary public.

My commission expires July 1, 1912.

This instrument was filed for record on the 13 day of Apl. A. D., 1910, at 8 o'clock A. M., and duly recorded in Book D-28-A, on page 595.

CERTIFICATE OF TRUE COPY.

State of Oklahoma, Okmulgee County—ss.

I, C. W. Goree, County Clerk, in and for the County of Okmulgee, State of Oklahoma, duly qualified and acting as such, do hereby certify that the foregoing is a full, true and complete copy of a warranty deed from Mack Francis to Maud Mitchell filed for record in my office on the 13th day of April 1910 at 8 A. M. and duly recorded in record D-28-A on page 595 as the same now appears from the said record in my office.

Witness my hand and official seal at Okmulgee, Oklahoma, this the 24th day of May 1915.

(Seal)

C. W. GOREE,
County Clerk in and for the County of Okmulgee, State of Oklahoma.
By J. M. CAMPBELL, *Deputy.*

In the District Court of the United States for the Eastern District of Oklahoma. Annie Harris, formerly Annie Francis, Plaintiff, v. *Harry H. Bell, et al., Defendants.—Equity No. 2015.*

ORDER THAT AGREED STATEMENT OF FACTS AND TESTIMONY HAD BEFORE THE COURT ON THE TRIAL OF THE ABOVE ENTITLED CAUSE BE PRINTED IN FULL IN THE TRANSCRIPT ON APPEAL, AND SETTLING AND APPROVING THE AGREED STATEMENT OF FACTS AND THE TESTIMONY.

Now on this 17 day of February, 1917, came on to be considered the statement of Annie Francis, Amos Francis and Elizabeth Francis, of the evidence to be included in the record on appeal in the above entitled cause, and the Court having heretofore considered, ordered and adjudged that the agreed statement of facts and all of the testimony had and taken in said cause before this Court on the trial thereof, be incorporated and reproduced in the exact words of the witnesses in the transcript on appeal by said named parties from the final decree of this Court to the United States Circuit Court of Appeals for the Eighth Circuit.

Now therefore, it is further considered, ordered and adjudged that the above and foregoing agreed statement of facts and testimony to be included in the record on appeal is hereby approved and ordered filed in said cause as a part of the record for the purposes of the appeal, and that the within and foregoing statement of facts thus approved, together with the verbatim oral testimony of the witnesses aforesaid, shall constitute the entire record of the evidence on appeal in this case.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Feb. 17, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 20th day of June, A. D. 1916, the court filed its opinion herein, which is in words and figures as follows:

Opinion.

CAMPBELL, J.:

The controlling facts in this case are set forth in an agreed statement of facts filed at the trial, to which reference is made without repeating them here. All the parties plaintiff and de-

fendant agree that the title to the land in controversy was, by virtue of the arbitrary allotment and patenting of this land by the Commission to the Five Civilized Tribes in the name of Freeland Francis after his death, vested in his heirs. The chief questions raised between them are as to whether the Arkansas law or Oklahoma law determines who are the heirs and what, if any, restrictions upon alienation attached to this land in the hands of the heirs. It will, therefore, be assumed for the purpose of this case that title vested in the heirs of Freeland Francis. For reasons stated in an unreported opinion recently rendered and filed in this court in No. 2175 Equity, *Youngken et al.* v. *David et al.*, it is held that the restrictions imposed by sections 19 and 22 of the Act of April 26, 1906 (34 Stat. L. 137), do not apply to the land in controversy in this case, the land not having been selected by or for or allotted to Freeland Francis during his lifetime. Freeland Francis was enrolled and the allotment was made in his name pursuant to the following provision found in the Indian Appropriation Act of March 3, 1905 (33 Stat. L. 1048):

> "That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this act to receive and consider applications for enrollments of children born subsequent to May twenty-five, nineteen hundred and one, and prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Creek Tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act; and to enroll and make allotments to such children."

By section 28 of the Original Creek Agreement (31 Stat. L. 861) it was provided that all citizens having certain qualifications therein stated should be placed upon the tribal rolls. Then follows this provision:

> " All children born to citizens so entitled to enrollment, up to and including the first day of July, nineteen hundred, and then living, shall be placed on the rolls made by said Commission; and if any such child die after said date, the lands and moneys to which it would be entitled, if living, shall descend to its heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.
>
> " The rolls so made by said Commission, when approved by the Secretary of the Interior, shall be the final

rolls of citizenship of said tribe, upon which the allotment of all lands and the distribution of all moneys and other property of the tribe shall be made and to no other persons."

By section 7 of the Supplemental Creek Agreement (32 Stat. L. 500) it was provided:

> " All children born to those citizens who are entitled to enrollment as provided by the Act of Congress approved March 1, 1901 (31 Stat. L. 861), subsequent to July 1, 1900, and up to and including May 25, 1901, and living upon the latter date, shall be placed on the rolls made by said Commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly."

Thus the legislation stood so far as relating to the enrollment and allotment of "New Born" Creek children until the passage of the Indian Appropriation Act of March 3, 1905, the applicable portion of which is quoted above. It will be noted that by this provision the Commission is "authorized" for sixty days to receive and consider applications for enrollment of children born subsequent to May 25, 1901, and prior to March 4, 1905, and living on the latter date and, further authorized to enroll and make allotments to such children. By reference to the section of the Supplemental Agreement above quoted it is seen that it only provided for the enrollment of children born up to May 25, 1901. This provision of the Act of 1905 extends the time to March 5, 1905, so that children born up to that time may be enrolled and allotted. In this respect it is clearly passed with reference to this prior legislation and is an amendment or modification of the Supplemental Agreement in this regard. Having been authorized to receive and consider such applications for enrollment the Commission must look to the original and supplemental agreements for directions controlling the enrollment and allotment of such children. In case such child should receive its allotment during its lifetime such allotment would be subject to the restrictions upon alienation provided by section 16 of the supplemental agreement, and would descend to his heirs in case of his death pending such restrictions subject to the same. No provision is found in the

Act of 1905 as to the vesting of the lands and moneys in the heirs in case such child should die before allotment. If, however, the purpose of this act was merely to modify or amend the existing legislation or agreements so as to extend the benefits of enrollment and allotment to children born up to March 4, 1905, then its effect would be to substitute in section 7 of the Supplemental Agreement May 25, 1901, for July 1, 1900; and March 4, 1905, for May 25, 1901, leaving effective that portion of said section providing that if any such child should thereafter die before receiving his allotment of lands and moneys to which he would be entitled if living, the same should descend to his heirs according to chapter 49 of Mansfield's Digest of the Statutes of Arkansas. As no reason is perceived why Congress should have made any different provision regarding the allotments for children born prior to May 25, 1901, and those born subsequent to that date, the above suggested construction would seem reasonable. If that construction is accepted then the heirs and their interests must be determined by the Arkansas law and the land was not subject to restriction. *Skelton* v. *Dill*, 235 U. S. 206; *Washington* v. *Miller*, 235 U. S. 422; *Priddy* v. *Thompson*, 204 Fed. 955.

But if, as contended by some of the parties, the heirs in this case acquired the title by virtue of section 5 of the Act of April 26, 1906, or section 32 of the Act of June 25, 1910 (36 Stat. L. 855), or both, the heirs and their respective interests must still be determined by the Arkansas law. Section 5 provides:

> " That all patents or deeds to allottees in any of the Five Civilized Tribes to be hereafter issued shall issue in the name of the allottee, and if any such allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs, and in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life, and all patents heretofore issued, where the allottee died before the same became effective, shall be given like effect;"

Section 32 of the Act of June 25, 1910, provides:

> " Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or Act of Congress, to a person who had died or who hereafter dies before the approval of such

deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life."

In each of these last mentioned acts it is provided that the title to the land shall inure to and vest in the heirs of the deceased allottee as if the patent or deed had issued to him during his lifetime. If the patent to the land in controversy had issued to Freeland Francis during his lifetime it would have descended to his heirs on June 22, 1905, the date of his death. At that date the general law of descent and distribution in force in Indian Territory, as well as that specially in force in the Creek Nation as provided by the Supplemental Agreement above quoted, was chapter 49 of Mansfield's Digest of the Statutes of Arkansas. If the title is to vest as if the patent had issued to Freeland Francis during his lifetime, then the controlling date is the date of his death June 22, 1905, and not December 4, 1907, the date the allotment was actually made.

But even though the heirs in this case must find the justification of their claim of title in section 5 of the Act of April 26, 1906, or section 32 of the Act of April 25, 1910, or both, still the land came to them free from any restrictions upon alienation, because the restrictions provided by section 16 of the Supplemental Agreement only attached to allotments made to living citizens in their own right. *Skelton* v. *Dill, supra.* Applying the Arkansas law it follows that one-half of this land vested by the allotment and patent to Freeland Francis after his death in the plaintiff Annie Harris, his mother, and one-half in the heirs of his father William Francis. Section 2531 Mansfield's Digest; *Shulthis* v. *McDugal,* 170 Fed. 529; *McDugal* v. *McKay,* 237 U. S. 372. The heirs of William Francis are Mack Francis, Amos Francis and Elizabeth Francis, each of whom took one-third of the one-half passing to the heirs of William Francis, or one-sixth of the whole.

It follows that the deed from the plaintiff to Laura L. McGinnis dated January 15, 1908, conveyed all of plaintiff's interest in the land in controversy. The defendant Harry Bell, therefore, took no interest in the land by virtue of plaintiff's subsequent deed to him.

The deed of W. J. Cook, as guardian of Amos Francis, and Elizabeth Francis, to Lightsey and Taylor made upon order of the County Court of Okmulgee County and approved and

confirmed by that court, conveyed to said Lightsey and Taylor all the interest of said minors in said land. The subsequent oil and gas lease of said minors to the Hoppy-Toad Oil & Gas Company, therefore, conveyed no interest in said land to that company.

Counsel for Lamb and Brady states in his brief that these defendants claim no interest in the title as disclosed by the record. The record fails to show service upon A. B. Miller, so that his interest if any in the land involved can not be affected by the decree. As against the other defendants claiming under Mack Francis his deed of April 9, 1910, to Maude Mitchell conveyed to her his one-sixth interest in the land. At her death intestate on September 17, 1911, her interest passed in equal parts to her husband J. Orlando Mitchell and her daughter Gertrude Womack. The interest thus inherited by J. Orlando Mitchell has passed by series of mesne conveyances to the defendant Gill.

It follows that decree must enter against the plaintiff and in favor of the several defendants found to have an interest in the property. If counsel can agree upon form of decree the same may be prepared and presented for signing and entry. If counsel do not so agree before Monday July 10th next the court will on that date at ten o'clock A. M. at Muskogee hear counsel and determine the form of decree to be entered herein.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Jun. 20, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 22nd day of July, A. D. 1916, the following proceedings were had in this cause. Honorable RALPH E. CAMPBELL, Judge presiding:

Decree.

This cause came on to be heard on this the July, 1916, term and was argued by counsel, and the court having heard the evidence finds:

I.

That Freeland Francis was duly enrolled as a citizen of the Creek Nation, his enrollment having been made and his name placed upon the Creek Tribal Rolls on the 10th day of

June, 1905. The court finds that he died on the 22nd day of June, 1905, intestate, unmarried and without issue and that he left surviving him no father, but left his mother, the plaintiff herein, Annie Francis, his brother Amos Francis, and his sister, Elizabeth Francis, and his half brother, Mack Francis, surviving him.

II.

The court finds that on the 4th day of December, 1907, there was allotted in his name by the Commission to the Five Civilized Tribes, the proportionate share of the public domain of the Creek Nation to which he was entitled by virtue of his citizenship the following described tract of land located in Okmulgee County, Oklahoma, to-wit:

> The East Half of the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section Twenty-five (25), and the Southeast Quarter of the Southwest Quarter of Section Twenty-six (26), all in Township Sixteen (16) North, Range Thirteen (13) East,

and that patents therefor were duly issued in his name by the Creek Nation on the 10th day of December, 1908, and approved by the Secretary of the Interior.

III.

The court finds that the Arkansas Law of descent and distribution controls the descent of said land, and that upon the death of Freeland Francis and the issuance of the certificate of allotment to the above described tract of land his mother, the plaintiff, inherited and became seized in fee simple of an undivided one-half interest in and to said premises and that Elizabeth Francis, Amos Francis and Mack Francis, brothers and sister of the said Freeland Francis inherited and became seized of an undivided one-sixth (1/6) interest each in and to said premises.

IV.

The court finds that on the 15th day of January, 1908, the plaintiff executed a deed to the defendant, Laura L. McGinnis, which deed was duly filed for record in the office of the Register of Deeds of Okmulgee County, Oklahoma, and that said deed operated to convey the title to an undivided one-half (½) interest in said premises from the plaintiff to the defendant.

V.

On the 8th day of January, 1909, the said defendant Laura L. McGinnis executed to the defendants H. L. Lightsey and John R. Taylor a warranty deed which was duly filed for record in the office of the Register of Deeds of Okmulgee County, and that said deed operated to convey to the grantees therein named an undivided one-half (½) interest in said premises.

VI.

On the 15th day of January, 1912, W. J. Cook, who was the guardian of Elizabeth Francis and Amos Francis, made and executed, under the orders of the County Court of Okmulgee County, a guardian's deed to the defendants, H. L. Lightsey and John R. Taylor, which deed was duly acknowledged and filed for record in the office of the Register of Deeds of Okmulgee County, and that said deed operated to convey to the grantees therein named an undivided one-third (1/3) interest in said premises.

VII.

On the 5th day of April, 1913, the defendants, H. L. Lightsey and John R. Taylor, executed to the defendant, A. W. Shulthis, an oil and gas mining lease covering the above described tract of land, which said lease was duly acknowledged and filed for record in the office of the Register of Deeds of Okmulgee County, and the court finds that said lease, subject to its terms and provisions, operated to vest in the defendant, A. W. Shulthis, a five-sixths (5/6) interest in the oil and gas rights in and under said premises.

VIII.

The court finds that Mack Francis executed a deed on the 9th day of April, 1910, to Maud Mitchell, and that said deed operated to convey a one-sixth (1/6) interest in the above described tract of land to the grantee therein named; that Maud Mitchell died on the 17th day of September, 1911, leaving surviving her her husband, Orlando Mitchell, and her daughter, the defendant, Gertrude Wommack, who each inherited and became seized of an undivided one-twelfth (1/12) interest in said premises.

IX.

The court finds that the one-twelfth (1/12) interest so in-

herited by J. Orlando Mitchell has been conveyed by mesne conveyances to the defendant Eugene W. Gill.

X.

The court further finds that neither the plaintiff, Annie Harris, nor the defendants, Amos Francis and Elizabeth Francis, have any right, title or interest in or to the premises, and that the defendant, Harry H. Bell, has no right, title or interest under and by virtue of the deed executed by the plaintiff to him, on the 27th day of February, 1913, and approved by the County Courts of Muskogee and Okmulgee Counties. The court finds that said deed is a cloud upon the title of the defendants, Lightsey & Taylor, and A. W. Shulthis, E. W. Gill and Gertrude Wom*m*ack.

XI.

The court further finds that the defendant, Hoppy-Toad Oil & Gas Company, did not acquire any interest in and to said premises under and by virtue of the oil and gas lease executed to it by W. J. Cook, as guardian of Amos Francis and Elizabeth Francis, on the 27th day of February, 1913, and that said oil and gas mining lease is a cloud upon the title of the defendants adjudged to be the owners herein, and that said lease ought to be cancelled and set at naught.

XII.

The court finds that the defendants, J. A. Wood, H. R. Pierson, H. E. Brady, Frank F. Lamb, W. H. Harris, Howell H. Brown, and Harry L. Eagin, have no right, title or interest in and to said premises.

It Is, Therefore, Ordered, Adjudged and Decreed That the plaintiff take nothing by her petition; that the defendants H. L. Lightsey and John R. Taylor, be and are hereby adjudged to be the owners of an undivided five-sixths (5/6) interest in and to the above described premises, subject to the oil and gas lease of the defendant, A. W. Shulthis; that the said defendant, A. W. Shulthis, is adjudged to be the owner of a good and valid oil and gas mining lease upon the five-sixths (5/6) interest owned by the said Lightsey & Taylor; that the said defendant, Eugene W. Gill, be and is hereby adjudged to be the owner of an undivided one-twelfth (1/12) interest in said premises, and that Gertrude Wom*m*ack is adjudged to be the

owner of an undivided one-twelfth (1/12) interest therein. And that the title of these defendants be forever quieted against the claims of the plaintiff, and against the claims of the other defendants; that the deed executed by the plaintiff, Annie Harris, to the defendant, Harry H. Bell, on the 27th day of February, 1913, be canceled, set aside and held for naught, and that the oil and gas mining lease executed by W. J. Cook, as guardian of the defendant, Amos Francis and Elizabeth Francis, to the Hoppy-Toad Oil & Gas Company be cancelled, set aside and held for naught, and that the plaintiff and defendants, Harry H. Bell, Hoppy-Toad Oil & Gas Company, J. A. Wood, H. R. Pierson, H. E. Brady, Frank F. Lamb, W. H. Harris, Howell H. Brown and Harry L. Eagin be forever enjoined from asserting any claim or title to the above described premises.

And it appearing to the court that heretofore on February 17, 1915, on representation in open court by counsel for the defendants A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling that the defendants Amos Francis and Elizabeth Francis were minors whose right, title and interest in the property in controversy is involved in this action, and the necessity for the appointment of a guardian *ad litem* for such minors appearing, Honorable W. C. Franklin, a member of the bar of this court, was appointed guardian *ad litem* for said minor defendants, and as such guardian *ad litem* has filed pleadings herein for said minor defendants and has represented them to final hearing herein.

It is ordered, adjudged and decreed that said W. C. Franklin be, and he hereby is, allowed as and for his compensation and fee as such guardian *ad litem* and attorney herein the sum of $250.00 to be taxed as a part of the costs herein against the said defendants A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling. All other courts costs herein are hereby taxed against the several parties plaintiff and defendant by whom they were respectively incurred.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Jul. 22, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 19th day of January, A. D. 1917, the Plaintiff filed Petition for Allowance of Appeal, together with

Assignment of Errors, which appeal was allowed by the court. Said Petition for Allowance of Appeal, Order Allowing Appeal and Assignment of Errors are in words and figures as follows:

Petition and Application for Appeal.

Come now Annie Harris, formerly Annie Francis, plaintiff in above entitled cause, and Amos Francis and Elizabeth Francis, by their guardian *ad litem*, W. C. Franklin, defendants in above entitled cause, and, feeling themselves aggrieved by the final decree made and entered in the above styled and numbered cause on the 22nd day of July, 1916, do hereby in open court appeal from said decree and order to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons and upon the grounds specified in their assignment of errors which is submitted and filed herewith; that said plaintiff and defendants pray that an appeal may be allowed and that the transcript of the order, proceedings and papers upon which said decree and order were based, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Eighth Circuit.

R. C. ALLEN,

JAMES C. DAVIS,

Solicitors for said plaintiff, Annie Harris, formerly Annie Francis, and for said defendants Amos Francis and Elizabeth Francis, by their guardian ad litem, W. C. Franklin.

Endorsed: Filed Jan. 19, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Assignment of Errors.

1.

The court erred in rendering judgment against the plaintiff and in favor of the defendants, H. L. Lightsey, John R. Taylor, A. W. Shulthis, Eugene W. Gill and Gertrude Womack.

2.

The court erred in holding, concluding and adjudging that the title of the defendants, H. L. Lightsey, John R. Taylor, A. W. Shulthis, in and to a five-sixths interest in the East half

(E2) of the Southeast quarter (SE4) and the Southwest quarter (SW4) of the Southeast quarter (SE4) of Section twenty-five (25), and the Southeast quarter (SE4) of the Southwest quarter (SW4) of Section twenty-six (26), all in Township sixteen (16) north, Range thirteen (13) east, was valid and perfect as against the plaintiff Annie Harris, and defendants Amos Francis and Elizabeth Francis, said lands having been duly and legally allotted by the Commissioner to the Five Civilized Tribes on the 4th day of December, 1907, in the name of Freeland Francis, the said Freeland Francis being a new born citizen of the Creek Nation enrolled on the 10th day of June, 1905, under the provisions of the Act of Congress approved March 3, 1905, opposite enrollment number 1070, patents for which lands were thereafter issued by the Creek Nation on the 10th day of December, 1908, and later approved by the Secretary of the Interior, the said Freeland Francis having been born on the 30th day of April, 1903, and having died on the 22nd day of June, 1905, without issue, unmarried, and without having selected an allotment of land in the Creek Nation.

3.

The court erred in holding, concluding and adjudging that H. L. Lightsey and John R. Taylor were the owners of an undivided five-sixths interest in and to the above described lands, subject to an oil and gas lease of defendant A. W. Shulthis, and that A. W. Shulthis was the owner of a good and valid oil and gas mining lease upon the five-sixths interest in said lands owned by the said defendants Lightsey and Taylor, and in quieting the title of said last named defendants in and to a five-sixths interest in said lands as against the claims of the plaintiff Annie Harris and defendants Amos Francis and Elizabeth Francis.

4.

The court erred, as a matter of law, in holding, concluding and adjudging that said described lands, being the allotment of Freeland Francis, a full blood Creek Indian, was without restriction upon the alienation thereof in the hands of the heirs of the said Freeland Francis, and was subject to alienation and sale by them at the date of the allotment thereof, December 4, 1907.

5.

The court erred in holding, concluding and adjudging that a deed of Annie Francis executed on the 15th day of January, 1908, wherein and whereby she conveyed said described lands to the defendant Laura L. McGinnis, was effective for the purpose of conveying her interest in said lands to said defendant.

6.

The court erred in holding, concluding and adjudging that the deed made and executed on the 15th day of January, 1912, by W. J. Cook, as guardian of Elizabeth Francis and Amos Francis, under the orders of the County Court of Okmulgee County a guardians' deed to the defendants H. L. Lightsey and John R. Taylor, operated to convey to the grantees therein named an undivided one-third interest in and to said described lands.

7.

The court erred in holding, concluding and adjudging that the deed executed on the 8th day of January, 1909, by the defendant Laura L. McGinnis to the defendants H. L. Lightsey and John R. Taylor, operated to convey to the grantees therein named an undivided one-half interest in said premises.

8.

The court erred in holding, concluding and adjudging that the oil and gas mining lease covering the above described tract of land executed on the 5th day of April, 1913, by the defendants H. L. Lightsey and John R. Taylor to the defendant A. W. Shulthis, operated to vest in the defendant A. W. Shulthis a five-sixth interest in the oil and gas rights in and under said premises.

9.

The court erred in holding, concluding and adjudging that neither the plaintiff Annie Harris nor the defendants Amos Francis and Elizabeth Francis have any right, title or interest in or to the premises.

10.

The court erred in not quieting the title to a one-half interest in and to said lands in the plaintiff Annie Harris.

11.

The court erred in not quieting title in and to a one-sixth interest in and to said lands in the defendant Amos Francis.

12.

The court erred in not quieting the title in and to a one-sixth interest in and to said lands in the defendant Elizabeth Francis.

Wherefore, the plaintiff Annie Harris, formerly Annie Francis, and the defendants Amos Francis and Elizabeth Francis, acting herein by their guardian *ad litem*, W. C. Franklin, pray that said final decree be reversed, and the District Court of the United States for the Eastern District of Oklahoma be directed to set aside said decree so as aforesaid rendered on the 22nd day of July, 1916, and to proceed in said cause and to enter such final decree and judgment as will give to the plaintiff Annie Harris the relief prayed for in her petition, and to the defendants Amos Francis and Elizabeth Francis the relief prayed in their answers filed herein, and to such other and further relief as said Annie Harris and the said Amos Francis and Elizabeth Francis may be entitled.

R. C. ALLEN,

JAMES C. DAVIS,

Solicitors for said plaintiff Annie Harris, and for said defendants Amos Francis and Elizabeth Francis, by their guardian ad litem, W. C. Franklin.

Endorsed: Filed Jan. 19, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Order Allowing Appeal.

Now come on for hearing in open court the petition and application of the plaintiff, Annie Harris, formerly Annie Francis, and defendants, Amos Francis and Elizabeth Francis, by their guardian *ad litem* W. C. Franklin, for appeal in the above entitled cause, and the said petition and application having been duly considered, and the court being fully advised in the premises, it is considered, ordered and adjudged that the said petition and application be allowed and granted and the appeal therein prayed for this day is allowed in open court

and bond for costs of said application fixed in sum of Five Hundred ($500.00) Dollars.

Done in open court this 19th day of January, 1917.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Jan. 19, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Request and Motion for Incorporation of Oral Testimony in Transcript.

Now on this, the .... day of January, 1917, come Annie Harris, formerly Annie Francis, plaintiff in the above entitled cause, Amos Francis and Elizabeth Francis, by their guardian *ad litem*, W. C. Franklin, defendants in said cause, by and through their solicitors, R. C. Allen and James C. Davis, and respectfully represent and show to the court that they desire that the agreed statement of facts and all of the testimony had and taken in the trial before this court of the above entitled cause be incorporated and reproduced in the exact words of the witnesses in the transcript on appeal, an appeal having heretofore been allowed herein to said named parties to the Eighth Circuit Court of Appeals, and as reasons therefor said parties say that both said agreed statement of facts and the oral testimony produced before the court are brief, and will better present to said court of appeals on said appeal thereto the questions at issue in said cause than would a narrative statement thereof.

Annie Harris, formerly
Annie Francis,
Amos Francis and
Elizabeth Francis,
by their guardian *ad litem*,
W. C. Franklin.
By R. C. ALLEN,
JAMES C. DAVIS,
Their Solicitors.

Endorsed: Filed Jan. 20, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Order.

Now, on this, the 20th day of January, 1917, there comes on for hearing in the above entitled cause the request and motion of Annie Harris, formerly Annie Francis, plaintiff in the above entitled cause, and Amos Francis and Elizabeth Francis, by their guardian *ad litem,* W. C. Franklin, defendants in said cause, that the agreed statement of facts and all of the testimony had and taken in the trial of said cause before this court be incorporated and reproduced in the exact words of the witnesses in the transcript on appeal, an appeal having heretofore been allowed to the said named parties to the Eighth Circuit Court of Appeals, and the court having seen and read said request and motion, and having fully considered same, and being advised in the premises, sustains said motion.

It Is, Therefore, Considered, Ordered and Adjudged, that the agreed statement of facts and all of the testimony had and taken in said cause before this court on the trial thereof be incorporated and reproduced in the exact words of the witnesses in the transcript on appeal by said named parties from the final decree of this court to the United States Circuit Court of Appeals for the Eighth Circuit.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Jan. 20, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Citation.

The United States of America to:

Harry H. Bell, J. A. Wood, H. R. Pierson, A. C. Brady, Frank F. Lamb, A. B. Miller, Maude Mitchell, W. H. Harris, L. A. Bell, H. L. Lightsey, John R. Taylor, Mack Francis, J. Orlando Mitchell, Howell H. Brown, Thomas W. Daniel, Laura L. McGinnis, Harry F. Eagan, Eugene W. Gill, John V. McMahon, J. S. Kirkpatrick, R. C. Martin, H. M. Kirkpatrick, Gertrude Womack, A. W. Shulthis, W. H. Whitford, R. L. Ebling, and Hoppy-Toad Oil and Gas Company, *Greeting:*

You and each of you are hereby commanded and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, State

of Missouri, sixty days from and after the day this citation bears date, pursuant to the appeal allowed and filed in the clerk's office of the United States District Court for the Eastern District of Oklahoma, wherein Annie Harris, formerly Annie Francis, and Amos Francis and Elizabeth Francis appearing by W. C. Franklin their guardian *ad litem*, are appellants, and you are appellees, to show cause, if any there be, why the judgment and decree rendered against said appellants in said decree mentioned should not be corrected and why speedy justic should not be done in that behalf.

Witness the Honorable RALPH E. CAMPBELL, Judge of the United States District Court for the Eastern District of Oklahoma, this 19th day of January, 1917.

RALPH E. CAMPBELL,
Judge of the United States District Court for the Eastern District of Oklahoma.

ACKNOWLEDGMENT OF SERVICE OF CITATION.

Service of the citation issued on the 19th day of January, 1917, by the Honorable RALPH E. CAMPBELL, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled cause to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 22 day of January, 1917, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation and the assignment of errors filed by the appellants in said cause in said court on the 19th day of January, 1917.

N. A. GIBSON,
Solr. for Harry H. Bell.

ACKNOWLEDGMENT OF SERVICE OF CITATION.

Service of the citation issued on the 19th day of January, 1917, by the Honorable RALPH E. CAMPBELL, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled cause to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day

said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 25th day of January, 1917, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation and the assignment of errors filed by the appellants in said cause in said court on the 19th day of January, 1917.

R. C. MARTIN,
For himself,
H. M. KIRKPATRICK,
For himself,
H. L. Lightsey, Thomas W. Daniels, John R. Taylor and J. S. Kirkpatrick,
by KIRKPATRICK & KIRKPATRICK,
and R. C. MARTIN,
Their Attys.

ACKNOWLEDGMENT OF SERVICE OF CITATION.

Service of the citation issued on the 19th day of January, 1917, by the Honorable RALPH E. CAMPBELL, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled cause to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause. is acknowledged to have been made upon the undersigned appellees on this 24 day of January, 1917, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation and the assignment of errors filed by the appellants in said cause in said court on the 19th day of January, 1917.

FRANK F. LAMB,
Atty. for F. F. Lamb,
Atty. for A. C. Brady,
Atty. for E. W. Gill.

ACKNOWLEDGMENT OF SERVICE OF CITATION.

Service of the citation issued on the 19th day of January, 1917, by the Honorable RALPH E. CAMPBELL, United States Judge for the Eastern District of Oklahoma, citing appellees

in the above entitled cause to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 20 day of January, 1917, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation and the assignment of errors filed by the appellants in said cause in said court on the 19th day of January, 1917.

A. W. SHULTHIS,
E. J. LAMBERT,
W. H. WHITFORD,
R. L. EBLING,

By WM. M. MATTHEWS, and
GEO. S. RAMSEY,
Their Counsel.

ACKNOWLEDGMENT OF SERVICE OF CITATION.

Service of the citation issued on the 19th day of January, 1917, by the Honorable RALPH E. CAMPBELL, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled cause to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 23rd day of January, 1917, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation and the assignment of errors filed by the appellants in said cause in said court on the 19th day of January, 1917.

BELFORD & HIATT,
Attys. for Gertrude Womack.

ACKNOWLEDGMENT OF SERVICE OF CITATION.

Service of the citation issued on the 19th day of January, 1917, by the Honorable RALPH E. CAMPBELL, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled cause to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day

said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 23rd day of January, 1917, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation and the assignment of errors filed by the appellants in said cause in said court on the 19th day of January, 1917.

HOPPY-TOAD OIL & GAS COMPANY,
By J. E. THRIFT, *Atty.*

ACKNOWLEDGMENT OF SERVICE OF CITATION.

Service of the citation issued on the 19th day of January, 1917, by the Honorable RALPH E. CAMPBELL, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled cause to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 22nd day of January, 1917, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation and the assignment of errors filed by the appellants in said cause in said court on the 19th day of January, 1917.

HARRY F. EAGAN.

ACKNOWLEDGMENT OF SERVICE OF CITATION.

Service of the citation issued on the 19th day of January, 1917, by the Honorable RALPH E. CAMPBELL, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled cause to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 23 day of January, 1917, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation and the assignment of errors filed by the appellants in said cause in said court on the 19th day of January, 1917.

W. H. HARRIS.

Praecipe for Transcript.

To the Clerk of the Above Named Court:

You will please incorporate into the transcript of the record on the appeal taken by the plaintiff, Annie Harris, formerly Annie Francis, and the defendants Amos Francis and Elizabeth Francis by their guardian *ad litem*, W. C. Franklin, in the case of Annie Harris, formerly Annie Francis, plaintiff, against Harry H. Bell, *et al.*, defendants, equity number 2015, the following portions of the record, to-wit:

1.

The amended petition of *Annie Harris, formerly Annie Francis vs. Harry H. Bell, et al.*, filed in the office of the clerk of the District Court in and for the County of Okmulgee, State of Oklahoma, on the 30th day of August, 1913, and thereafter filed in the office of the district clerk of the District Court of the United States for the Eastern District of Oklahoma, on the 18th day of October, 1913, and exhibits attached.

2.

The joint and several answers of the defendants, Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor, filed in the office of the clerk of the United States District Court on the 10th day of December, 1913, and copies of agreement and general warranty deed attached.

3.

The separate answer of defendant, Harry H. Bell, filed in the office of the clerk of the United States District Court on the 12th day of December, 1913, together with copies of general warranty deed attached and order of County Court of Okmulgee County approving said deed.

4.

Answer of Laura L. McGinnis to the amended petition filed in the office of the clerk of the United States District Court on the 10th day of December, 1913.

5.

The joint and several answers of the defendants, A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling,

filed in the office of the clerk of the United States District Court on the 10th day of December, 1913.

6.

The joint and several answers of Eugene W. Gill, Frank F. Lamb, and A. C. Brady, filed in the office of the clerk of the United States District Court on the 16th day of December, 1913.

7.

The answers of Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor, to the counter claim and cross demand of defendant, Harry H. Bell, filed in open court on the 7th day of February, 1914.

8.

The answer and cross complaint of defendants, Amos Francis and Elizabeth Francis, by their guardian *ad litem*, filed in the office of the clerk of the United States District Court on the 1st day of March, 1915.

9.

The separate answer of Gertrude Womack filed in open court on the 5th day of January, 1915.

10.

The answer of A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling to the counter claim and cross demand of defendant, Harry H. Bell, filed in open court on the 7th day of February, 1914.

11.

The answer of defendant, Hoppy-Toad Oil and Gas Company, filed in the office of the clerk of the United States District Court on the 19th day of May, 1915.

12.

The answer of defendants, A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling to the cross petition of Amos Francis and Elizabeth Francis by their guardian *ad litem*, W. C. Franklin, filed in the office of the clerk of the United States District Court on the 10th day of May, 1915.

13.

The joint and several answers and reply of the defendants, Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, John V. McMahon, H. L. Lightsey and John R. Taylor to the answer and cross petition of Amos Francis and Elizabeth Francis by their guardian *ad litem*, filed in the office of the clerk of the United States District Court on the 18th day of May, 1915.

14.

The reply of plaintiff to the separate answer of Gertrude Womack defendant, filed in the office of the clerk of the United States District Court on the *first* day of March, 1915.

15.

The reply of plaintiff to the joint and several answers of Eugene W. Gill, Frank F. Lamb and A. C. Brady, and also answer to their said cross petition filed in open court on the 6th day of January, 1914.

16.

The reply of defendant, Gertrude Womack to the answer of defendants, Amos Francis and Elizabeth Francis, by their guardian *ad litem*, filed in open court on the 24th day of May, 1915.

17.

The reply of plaintiff to the answer of Laura L. McGinnis to the amended petition filed in open court on the 6th day of January, 1914.

18.

The reply of plaintiff to the joint and several answers of A. W. Shulthis, E. J. Lambert, W. H. Whitford and R. L. Ebling, and answer to their counter claim filed in open court on the 6th day of January, 1914.

19.

The reply of plaintiff to answer and cross petition of the guardian *ad litem* for Amos Francis and Elizabeth Francis, filed in open court on the 24th day of May, 1915.

20.

The reply of Eugene W. Gill, Frank F. Lamb, and A. C. Brady, to answer of defendants, Amos Francis and Elizabeth

Francis by their guardian *ad litem*, filed in the office of the clerk of the United States District Court on the 18th day of May, 1915.

21.

The reply of plaintiff to the joint and several answers of defendants, Thomas W. Daniel, R. C. Martin, H. M. Kirkpatrick, J. V. McMahon, H. L. Lightsey and John R. Taylor, and answer to their counter claim and cross demand filed in open court on the 6th day of January, 1914.

22.

The reply of plaintiff to the separate answer of Harry H. Bell in answer to counter claim and cross demand filed in open court on the 6th day of January, 1914.

23.

The agreed statement of facts and the oral testimony had and heard upon the trial of the case before the Judge of the United States District Court for the Eastern District of Oklahoma.

24.

The order submitting the cause, dated May 25th, 1915.

25.

The opinion of District Judge RALPH E. CAMPBELL in the cause filed on the 20th day of June, 1916.

26.

The order appointing W. C. Franklin, guardian *ad litem*.

27.

The final decree of the court made and entered of record on the 22nd day of July, 1916.

28.

Petition for appeal filed in this cause on the 19th day of January, 1917, in open court.

29.

Order allowing appeal entered of record in this cause on the 19th day of January, 1917.

30.

The assignment of errors filed in this cause in open court on the 19th day of January, 1917.

31.

The citation for appellees filed in this cause in open court on the 19th day of January, 1917, and signed and issued by the court on the same date, and service of said citation on appellees.

32.

Request and motion of Annie Harris, formerly Annie Francis, Amos Francis, and Elizabeth Francis, that the agreed statement of facts and all testimony had and taken in the trial before the District Court be incorporated and reproduced in the exact words of the witnesses in the transcript on appeal, filed in open court on the 20th day of January, 1917.

33.

Order of court made and entered of record on the 20th day of January, 1917, directing that the agreed statement of facts and all testimony had and taken in the trial of this cause before the District Court, be incorporated and reproduced in the exact words of the witnesses in the transcript on appeal.

34.

This praecipe for transcript filed in this case, and service thereof.

And appellants further request that the said record be printed under the provisions of the Act of Congress, entitled "An Act to diminish the expense of proceedings on appeal and writ of error or of *certiorari*," approved February 13, 1911, and that the same be filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri, on or before sixty days from and after the 19th day of January, 1917.

R. C. ALLEN,

JAMES C. DAVIS,

Solicitors for Annie Harris, formerly Francis, plaintiff, and W. C. Franklin guardian ad litem for defendants, Amos Francis and Elizabeth Francis.

ACKNOWLEDGMENT OF SERVICE OF PRAECIPE FOR TRANSCRIPT.

Service of a full, true and complete copy of the praecipe of appellants addressed to the Clerk of the United States Dis-

trict Court for the Eastern District of Oklahoma, indicating the portions of the record to be incorporated in the transcript on the appeal in said cause, is hereby acknowledged this 22 day of January, 1917.

N. A. GIBSON,
Solr. for Harry H. Bell.

ACKNOWLEDGMENT OF SERVICE OF PRAECIPE FOR TRANSCRIPT.

Service of a full, true and complete copy of the praecipe of appellants addressed to the Clerk of the United States District Court for the Eastern District of Oklahoma, indicating the portions of the record to be incorporated in the transcript on the appeal in said cause, is hereby acknowledged this 25th day of January, 1917.

R. C. MARTIN,
For Himself.
H. M. KIRKPATRICK,
For Himself.

H. L. Lightsey,
Thomas W. Daniels,
John R. Taylor, and
J. S. Kirkpatrick,
By KIRKPATRICK & KIRKPATRICK,
and
R. C. MARTIN,
Their Attorneys.

ACKNOWLEDGMENT OF SERVICE OF PRAECIPE FOR TRANSCRIPT.

Service of a full, true and complete copy of the praecipe of appellants addressed to the Clerk of the United States District Court for the Eastern District of Oklahoma, indicating the portions of the record to be incorporated in the transcript on the appeal in said cause, is hereby acknowledged this 24 day of January, 1917.

FRANK F. LAMB,
Atty. for F. F. Lamb.
Atty. for A. C. Brady,
Atty. for E. W. Gill.

ACKNOWLEDGMENT OF SERVICE OF PRAECIPE FOR TRANSCRIPT.

Service of a full, true and complete copy of the praecipe of appellants addressed to the Clerk of the United States District Court for the Eastern District of Oklahoma, indicating the portions of the record to be incorporated in the transcript

on the appeal in said cause, is hereby acknowledged this 20th day of January, 1917.

A. W. Shulthis,
W. H. Whitford,
E. J. Lambert,
R. L. Ebling.

By Wm. M. Matthews,
Geo. S. Ramsey,
Their Counsel.

Acknowledgment of Service of Praecipe for Transcript.

Service of a full, true and complete copy of the praecipe of appellants addressed to the Clerk of the United States District Court for the Eastern District of Oklahoma, indicating the portions of the record to be incorporated in the transcript on the appeal in said cause, is hereby acknowledged this 23rd day of January, 1917.

Belford & Hiatt,
Attys. for Gertrude Womack.

Acknowledgment of Service of Praecipe for Transcript.

Service of a full, true and complete copy of the praecipe of appellants addressed to the Clerk of the United States District Court for the Eastern District of Oklahoma, indicating the portions of the record to be incorporated in the transcript on the appeal in said cause, is hereby acknowledged this 23rd day of January, 1917.

Hoppy Toad Oil & Gas Company.
By J. E. Thrift, *Atty.*

Acknowledgment of Service of Praecipe for Transcript.

Service of a full, true and complete copy of the praecipe of appellants addressed to the Clerk of the United States District Court for the Eastern District of Oklahoma, indicating the portions of the record to be incorporated in the transcript on the appeal in said cause, is hereby acknowledged this 22nd day of January, 1917.

Harry F. Eagan.

Acknowledgment of Service of Praecipe for Transcript.

Service of a full, true and complete copy of the praecipe of appellants addressed to the Clerk of the United States Dis-

trict Court for the Eastern District of Oklahoma, indicating the portions of the record to be incorporated in the transcript on the appeal in said cause, is hereby acknowledged this 23 day of January, 1917.

W. H. HARRIS.

Endorsed: Filed Feb. 1, 1917, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Certificate of Clerk.

United States of America, Eastern District of Oklahoma—ss.

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of *Annie Harris, formerly Annie Francis* v. *Harry H. Bell et al.*, No. 2015, Equity, as was ordered by praecipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I do further certify that the original Citation issued in this case is hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at my office, in the City of Muskogee, this 3rd day of March, A. D. 1917.

R. P. HARRISON, *Clerk.*

(Seal) By H. E. BOUDINOT, *Deputy.*

And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(*Appearance of Counsel for Appellants.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 4911.

ANNIE HARRIS, Formerly Annie Francis, et al., Appellants,

vs.

HARRY H. BELL et al.

The Clerk will enter my appearance as Counsel for the Appellants.

R. C. ALLEN.
JAMES C. DAVIS.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Mar. 13, 1917.

(*Appearance of Mr. Nathan A. Gibson, Mr. Joseph L. Hull, and Mr. Thomas L. Gibson as Counsel for Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.

NATHAN A. GIBSON.
JOSEPH L. HULL.
THOS. L. GIBSON.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 17, 1917.

(*Appearance of Mr. George S. Ramsey as Counsel for Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.

GEO. S. RAMSEY.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 18, 1917.

(*Appearance of Mr. William M. Matthews as Counsel for Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.

WILLIAM M. MATTHEWS.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 18, 1917.

(*Appearance of Mr. J. S. Kirkpatrick, Mr. R. C. Martin, and Mr. H. M. Kirkpatrick as Counsel for Certain Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.

H. M. KIRKPATRICK, *Pro Se,*
Idabel, Oklahoma.
R. C. MARTIN, *Pro Se,*
Tulsa, Oklahoma.
J. S. KIRKPATRICK,
Gates Bldg., Kansas City, Mo., and
R. C. MARTIN,
Tulsa, Okla., and
H. M. KIRKPATRICK,
Idabel, Okla.,
For H. L. Lightsey, Thomas W. Daniels and John R. Taylor.

H. M. KIRKPATRICK.
R. C. MARTIN.
J. S. KIRKPATRICK.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 18, 1917.

(*Appearance of Messrs. Belford & Hiatt as Counsel for Certain Appellees.*)

The Clerk will — my appearance as Counsel for the Appellees.

JABEZ BELFORD,
WILLIAM A. HIATT,
Okmulgee, Okla.

BELFORD & HIATT,
Attorneys for Gertrude Womack, One of Appellees.

Individual members of the firm are Jabez Belford and William A. Hiatt, both of Okmulgee, Oklahoma.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 8, 1917.

(*Appearance of Mr. John S. Kirkpatrick as Counsel for Certain Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees, Thomas Daniels, H. M. Kirkpatrick, R. C. Martin and Lightsey & Taylor.

JNO. S. KIRKPATRICK,
7" Floor, Gates Bldg.,
Kansas City, Mo.

(Endorsed:) Fil d in U. S. Circuit Court of Appeals, Aug. 1, 1917.

(*Order of Submission.*)

December Term, 1917.

FRIDAY, December 7, 1917.

This cause having been called for hearing in its regular order, argument was commenced by Mr. James C. Davis for appellants and concluded by Mr. William M. Matthews for appellees.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

(*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1917.

No. 4911.

ANNIE HARRIS, Formerly Annie Francis; AMOS FRANCIS and Elizabeth Francis, Minors, Appearing by W. C. Franklin, Guardian Ad Litem, Appellants,

vs.

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. Lamb, A. B. Miller, Maude Mitchell, W. H. Harris, L. A. Bell, H. L. Lightsey, John R. Taylor, Mack Francis, J. Orlando Mitchell, Howell H. Brown, Thomas W. Daniel, Laura L. McGinnis, R. C. Martin, H. M. Kirkpatrick, J. S. Kirkpatrick, John V. McMahon, A. W. Shulthis, E. J. Lambert, W. H. Whitford, R. L. Ebling, Gertrude Womack, Harry F. Eagan, Eugene W. Gill, and The Hoppy-Toad Oil & Gas Company, a Corporation, Appellees.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Mr. James C. Davis (Mr. R. C. Allen, was with him on the brief), for appellants.

Mr. P. J. Carey appeared on brief for guardian ad litem.

Messrs. Belford and Hiatt appeared on brief for appellee, Gertrude Womack.

Mr. Frank F. Lamb appeared on brief for appellee, Eugene W. Gill.

Mr. William M. Matthews (Mr. John S. Kirkpatrick, Mr. R. C. Martin, Mr. H. M. Kirkpatrick and Mr. George S. Ramsey on brief), for other appellees.

Before Sanborn and Smith, Circuit Judges, and Trieber, District Judge.

SANBORN, *Circuit Judge,* delivered the opinion of the Court.

This case presents many questions. The first is the character and extent of the restrictions on the alienation of 160 acres of land which was formerly the property of the Creek Tribe and was, on December 4, 1907, allotted by the Dawes Commission in the name of Freeland Francis, a new born full blood Creek Indian who was born on April 30, 1903, was enrolled on June 10, 1905, and died on June 22, 1905. The right of Freeland Francis to an allotment and to the land when allotted descended under the Creek agreements and the acts of Congress to his mother Annie Francis, who by marriage has become Annie Harris, his brother Amos Francis, his sister Elizabeth Francis and his half brother Mack Francis. Annie, Amos and Elizabeth are full blood Creek Indians; Mack is a half blood. On January 15, 1908, Annie made a deed of her interest in the land to Laura L. McGinnis which was approved by the Secretary of the Interior on July 6, 1910, and the respondents H. L. Lightsey and John R. Taylor have succeeded to the right conveyed by that deed. On January 22, 1912, W. J. Cook as guardian of Amos and Elizabeth, pursuant to orders of the County Court of Okmulgee County, Oklahoma, made his guardian's deed of their interest in the land to the respondents Lightsey and Taylor. The appellants Annie, Amos and Elizabeth claim that these deeds are void on account of restrictions on their power to alienate these lands by Sections 5, 19 and 22 of the Act of April 26, 1906, 34 Stat. 137, and Section 9 of the Act of May 27, 1908, 35 Stat. 312.

The court below was of the opinion that the appellants' right to alienate this land was exempt from the restrictions imposed by these acts, and that was the opinion of this court in a like case, Sunday v. Mallory, 150 C. C. A. 408, 237 Fed. 526. The Supreme Court, however, on March 4, 1918, decided in cases not distinguishable from that here in hand, that full blood heirs of a deceased enrolled citizen of one of the Five Civilized Tribes on whose account an allotment was selected after his decease by an administrator or by the Dawes Commission, are subject to the restriction in Section 22 of the Act of May 26, 1906, to the effect that all conveyances made thereunder by heirs who are full blood Indians are subject to the approval of the Secretary of the Interior, 34 Stat. 145; Brader v. James; Talley v. Burgess, and this court has followed that decision, David v. Youngken, filed April 3, 1918.

In view of these decisions the question arises whether or not Annie's deed made on January 15, 1908, and approved by the Secretary of the Interior on July 6, 1910, constituted a lawful conveyance. Counsel for the appellants insist that it did not, first, because, as they insist, she and the brothers and sisters of Freeland Francis took as allottees and not as heirs and she and they were prohibited from alienating their interests in the land by Sections 5 and 19 of the Act of April 26, 1906, 34 Stat. 138, 144, and second, because the power of the Secretary to approve her deed under Section 22 of that Act was revoked by the Act of May 27, 1908. 35 Stat. 312, 315, Sec.

9. But the first contention is inconsistent with the decision of the Supreme Court in Brader v. James and of this court in David v. Youngken cited above. In those cases the Supreme Court and this court had before them the question what restrictions were imposed by the Act of April 26, 1906, upon the alienation of their lands by full blood descendants of deceased Indians in whose names those lands had been selected and allotted after their death and they called such descendants heirs and held that the restrictions imposed by Section 22 governed their right of alienation. Moreover, Congress has persistently kept separate and imposed different restrictions upon the alienation of those to whom lands were allotted while they were living, Original Creek Agreement of March 1, 1901, 31 Stat. 861, 863, Sec. 7, Supplemental Creek Agreement, Act of June 30, 1902, 32 Stat. 500, 503, Sec. 16, Act of April 26, 1906, 34 Stat. 144, Sec. 19, and by the heirs of those deceased Indians in whose names lands were selected and allotted after their death. Original Creek Agreement, 31 Stat. 869, 870, Sec. 28; Supplemental Creek Agreement, 32 Stat. 500, 501, Sec. 7; Act of March 3, 1905, 33 Stat. 1048, 1071. By the acts first cited restrictions were placed upon the alienation of their lands by the members of the first class, but no restrictions upon the alienation of their lands by the members of the second class were imposed by any act of Congress prior to the Act of April 26, 1906. Skelton v. Dill, 235 U. S. 206, 207. The appellants in this case are members of the second class. They obtained their title under Section 28 of the Original Creek Agreement, Sec. 7 of the Supplemental Agreement, and the provision of the Appropriation Act of March 3, 1905, 33 Stat. 1048, 1071, to the effect that the Dawes Commission might enroll children born subsequent to May 25, 1901, but prior to March 4, 1905, and living on the latter date, to Indians whose enrollment had theretofore been approved by the Secretary, and might enroll and make allotments to such children. Freeland Francis was one of these new born citizens. The acts of Congress relating to this class of citizens in effect provide that the lands and moneys to which such citizen would have been entitled if living shall descend to his heirs according to the applicable laws of descent and distribution, and shall be allotted and distributed to them accordingly. 31 Stat. 869, 870, Sec. 28, 32 Stat. 500, 501, Sec. 7, 33 Stat. 1071. It was not as original members of the Creek Tribe to whom allotments were made while they were living, or as heirs of such members. It was not as allottees, but as heirs of a new born citizen for whom no selection or allotment had been made while he was living, it was not in their own right, but in his right, that the mother and the brothers and sister of Freeland Francis took this land. Now the Act of April 26, 1906, preserves the distinction between the two classes made by the prior legislation. It provides in Section 19, 34 Stat. 144, with exceptions not relevant here, that no full blood Indian of either of the five tribes shall have power to alienate the lands allotted to him for twenty-five years. It provides in Section 22 that the adult heirs of any deceased Indian of either of said tribes whose selection has been made, may sell and convey the lands inherited from such decedent, but that conveyances made under this provision shall be subject to the approval of the Secretary of the Interior. Section 19 applies to

full blood Indians to whom lands were allotted while they were living, and it does not apply to their heirs or to the appellants. Section 22 applies to the heirs of deceased Indians whose selections have been made. The appellants are such heirs and their power of alienation was not restricted by Section 19, but the restriction thereon imposed by the Act of April 26, 1906, was imposed thereon and governed exclusively by Section 22 thereof. Nor is there anything in Section 5 of the Act inconsistent with this conclusion. The first position of counsel for the appellant here is, therefore, untenable.

Counsel's second position, that the power of the Secretary of the Interior to approve and validate Annie's deed was revoked by the Act of May 27, 1908, is not more tenable. She made her deed on January 15, 1908, before the Act of May 27, of that year was passed. At that time she had the right to convey her land subject only to the approval of the Secretary and he had the right and power to approve it under Section 22 of the Act of April 26, 1906, and he did approve it on July 6, 1910. The Act of May 27, 1908, provides in Section 9 that the death of any allottee of the Five Civilized Tribes "shall operate to remove all restrictions upon the alienation of said allottee's land: Provided, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee." 35 Stat. 312, 313. The argument is that the Act of May 27, 1908, repealed the provision of Section 22 of the Act of April 26, 1906, regarding the approval by the Secretary and that this deprived him of the power to approve deeds made before the passage of the Act of May 27, 1908. But that act declares that "The Secretary of the Interior shall not be prohibited by this act from continuing to remove restrictions as heretofore, and nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this act." 35 Stat. 312, it makes an express amendment of the Act of April 26, 1906, 35 Stat. 315, Sec. 8, and it contains no express repeal of that act or of the provision of Section 22 which empowered the Secretary to approve deeds of full blood heirs. The rational and established rule is that where the validity of conveyances of land is conditioned by the approval of different officers, or by different restrictions at different times, the law in force at the date of the deed determines the restriction upon its validity and that where at that date a specified officer is empowered to approve and validate it he or his successor in office may lawfully do so after subsequent legislation has conditioned the validity of like conveyances with the approval of a different officer, or with different restrictions, and the true construction of Section 9 of the Act of May 27, 1908, is that it is prospective and not retrospective in effect, that it applies to conveyances made after its passage and is inapplicable to those made before its enactment. Pickering v. Lomax, 145 U. S. 310, 315; Lykins v. McGrath, 184 U. S. 169, 172; United States v. Knight, 206 Fed. 145, 148; Harris v. Gale, 188 Fed. 712, 716; MaHarry v. Eatman, 29 Okl. 46, 116 Pac. 935, 941, and the decision is that Annie's deed was validated by the approval of the Secretary of the Interior on July 6, 1910, that it then became a legal conveyance of all her

interest in the 160 acres here in controversy and that thereupon it related back and took effect as of the date of its execution.

The deed of the guardian of the minor heirs Amos and Elizabeth was made on January 22, 1912, pursuant to an order of the County Court of Okmulgee County, Oklahoma, to sell their interest in the land in controversy and an order of that court confirming the sale and directing the guardian to convey that interest which was made on January 15, 1912. As this deed was made after the passage of the Act of May 27, 1908, its validity is subject to and must be determined by that act. The pertinent provisions thereof are: "That the jurisdiction of the Probate Courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions," which provisions are not material to the issues now under consideration, "and the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years." 35 Stat. 312, Sec. 2. "That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the Probate Courts of the State of Oklahoma," and that the Secretary of the Interior may appoint local representatives to investigate the administration and disposition by any guardian or curator of the estate of any minor and in case of the dissipation, waste or deterioration thereof through the carelessness of such guardian or curator to report the matter to the proper probate court and to cause an investigation thereof and the application of the proper remedy. 35 Statutes 313, Sec. 6. "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: Provided, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee." 35 Statutes 315, Sec. 9. Freeland Francis resided and died on June 24, 1905, in that part of the Indian Territory which, upon the creation of the State of Oklahoma on November 26, 1908, became Wagoner County, and after that date the County Court of Wagoner County had power to acquire jurisdiction of the settlement of his estate. Compiled Laws of Oklahoma 1909, Sec. 5142, Page 1158. The land which is the subject of this litigation was situated and the minors resided in that part of the Indian Territory which upon the creation of the State of Oklahoma on November 16, 1908, became Okmulgee County, and the county court of that county has had plenary jurisdiction of the guardianship of their persons and property since that date. Prior to the creation of the State of Oklahoma all the lands now within Wagoner County and all the lands within Okmulgee County were within the Western District of Oklahoma and the United States Court for the Western District of Oklahoma had plenary jurisdiction of the settlement of the estate of Freeland Francis and of the guardianship of the minors Amos and Elizabeth. It had exercised that jurisdiction by appointing William J. Cook administrator of the estate of Freeland Francis and by appointing him guardian of the persons and property of the two minors before the State of Oklahoma came into existence. Mr. Cook had qualified

in each capacity and was discharging his duties therein when the state was created. Upon the admission of the state the jurisdiction of the guardianship proceeding, of the subject-matter and of the parties thereto passed, pursuant to the enabling act for Oklahoma and the Constitution and Laws of Oklahoma, to the County Court of Okmulgee County, and that court has since exercised jurisdiction thereover. No proceedings have ever been taken, so far as this record discloses, regarding the settlement of the estate of Freeland Francis in the County Court of Wagoner County. The objection to the validity of the guardian's deed is that it has never been approved as required by Section 9 of the Act of 1908 by the County Court of Wagoner County, which, after the admission of the state, might have taken jurisdiction of the settlement of the estate of Freeland Francis. But is the first proviso of that section applicable to a guardian's deed made by order of a county court which had plenary jurisdiction of the guardianship of the persons and of the disposition of the property of the minors by a provision of the same law? Was it the intention of Congress that the exercise by the county court of its undoubted jurisdiction of the guardianship of these minors and of the disposition of their estate should be futile unless some other court of equal rank which happened to have jurisdiction of the settlement of another Indian's estate approved it? Is it not more probable that it was the intention of Congress to grant to a county court which has jurisdiction of the guardianship of the persons and of the disposition of the lands of minor heirs unrestricted power to order the sale and conveyance of their property, and does not the true interpretation of the act exclude such sales and conveyances from the application of the first proviso of Section 9?

This act must be read and construed in the light of the general laws upon the same subject in force at the time of its passage. United States v. Trans-Missouri Freight Association, 58 Fed. 58. Prior to its passage Congress had adopted the settled policy of conferring plenary jurisdiction of the disposition of leases of restricted lands of minors upon the trial courts in the Indian Territory, and the jurisdiction of the approval of leases of such lands of adults upon the Secretary of the Interior. A claim had been made that leases made by guardians of minors pursuant to orders of such courts were void unless approved by the Secretary. This court remarked that there could be no full and complete jurisdiction of the guardianship of minor Indians and of the leasing of their allotments in a court whose judgments are reviewable and reversible by the officer of another department of the government, and after a review of all the pertinent legislation held that the grant of jurisdiction to the trial courts excluded the power of the Secretary to approve or disapprove the leases they ordered to be made and that his jurisdiction was limited to the approval of leases of adults. Morrison v. Burnette, 154 Fed. 617, 620, 83 C. C. A. 391, 394. It does not seem probable that the Congress intended by the Act of 1908 to reverse this policy, which it had adopted and put in force, and to subject the decisions and orders of the trial courts which had jurisdiction to decide the advisability of and to order the sales and conveyances of the lands of minors upon full proof, to the action of other courts of

equal rank which have no appellate jurisdiction over the former courts and no power to draw to themselves the evidence produced before such courts, or to review their action in the light of that evidence.

It is a cardinal rule of the construction of statutes that specific legislation in relation to a particular class or subject is not affected by general legislation in regard to many classes or subjects of which that covered by the specific legislation is one, unless it clearly appears that the general legislation is so repugnant to the special legislation that the legislators must be presumed to have intended thereby to modify or repeal it, but the special and the general legislation must stand together, the former as the law of the particular class or subject and the latter as the general law upon other subjects or classes within its terms. State v. Stoll, 17 Wall. 425, 436; Washington v. Miller, 235 U. S. 422, 427, 428; Priddy v. Thompson, 204 Fed. 955, 958, 959, 123 C. C. A. 277, 280, 281; Board of Commissioners v. Aetna Life Ins. Co., 32 C. C. A. 585, 590, 90 Fed. 222, 227; Christie-Street Commission Co. v. United States, 136 Fed. 326, 333, 69 C. C. A. 464, 471.

Section 6 of the Act of 1908 provides for the minor allottees and their property. It declares that the persons and property of minor allottees of the Five Civilized Tribes shall be subject to the jurisdiction of the Probate Courts of the State of Oklahoma. The proviso of Section 9 by its terms treats of all full blood Indian heirs of allottees of the Five Civilized Tribes including both adults and minors. It does not, however, specifically enact that the deeds of guardians of minors made by the order of the Probate Courts of Oklahoma pursuant to Section 6 shall be invalid unless approved by the courts having jurisdiction of the settlement of the estate of the respective deceased allottees. It does not show that in the enactment of this section there ever came to the minds of the legislators the question of the approval of such conveyances and the probability is that that question never did arise in their minds. When the entire act is read and thoughtfully considered it does not clearly appear from the provisions of Sections 2, 6 and 9 that they are so repugnant that the Congress must have intended by the first proviso of Section 9 practically to have revoked its grant by Section 6 to the proper Probate Courts of Oklahoma of plenary jurisdiction to hear and determine the advisability of and to order the sales and conveyances of the lands of such minor heirs, and it would seem that under the rule which has been cited the two provisions must stand together, that of Section 6 as the law of the sale of and of the conveyance of the lands of minor full blood heirs and the proviso of Section 9 as the law of the conveyances of full blood adult heirs.

Again, the purpose of this legislation was not to place vexatious and useless obstructions to the disposition of their lands by the full blood minor heirs such as the subjection of their guardians' conveyances to the adjudication of two courts of equal rank, neither of which would have the power to reverse the other, or to effect a conveyance without the consent of the other, would be. On the other hand, it was to assure to such minors a plenary investigation, trial and decision by a competent court, of the advisability of sales of

their lands and of the amounts for which they ought to be sold, and to secure to them adequate prices and a wise use or disposition of the proceeds they obtained that this law was enacted. All this is completely accomplished and with unusual care by the provisions of Section 6. Not only is a competent court thereby given plenary power and charged with the duty to accomplish this purpose, but provision is made for the appointment by the Secretary of special representatives to investigate the cases, to report to the county court and to see that the end sought is attained. Nothing but delay, expense and vexation could result from making the action of the court having jurisdiction of the guardianship, sale and conveyance subject to the approval of another court of equal rank which has no power to review the evidence before the former court and no authority to order or effect the sale itself. Every statute should have a reasonable, sensible construction in preference to an irrational one which renders it, or a substantial part of it, useless or deleterious. The intention of the legislative body must be presumed to have been to benefit, not to injure, those interested in the subject of the law and in the light of the considerations to which reference has been made it is incredible that the Congress ever intended to subject guardians' deeds of the lands of full blood minor heirs made pursuant to the orders of the only courts which had jurisdiction to direct their making to the approval of any other court of equal rank which had no appellate jurisdiction. And the conclusion is that the true interpretation of the Act of May 27, 1908, is that conveyances of adult full blood Indian heirs are subject to the first proviso of Section 9, but that that proviso is inapplicable to guardians' conveyances of the interests of minor full blood Indian heirs which have been regularly made pursuant to the orders of the County Courts of Oklahoma which had jurisdiction of the subject-matters and the parties to the proceedings before them in which they were ordered, and that the guardian's deed of the interest of the minors Amos Francis and Elizabeth Francis was a valid conveyance without the approval of the county court which might have had jurisdiction of the settlement of the estate of Freeland Francis whose heirs they are.

The minors Amos and Elizabeth assign as error the decision of the court below that the title to the land in controversy descended to the heirs of Freeland Francis under Sections 6 and 7 of the Supplemental Creek Agreement of June 30, 1902, 32 Stat. 500, 501, and the Appropriation Act of March 3, 1905, 33 Statutes 1048, 1071, in accordance with the provisions of Chapter 49 of Mansfield's Digest of the Laws of Arkansas, whereby the interest of Annie Francis became one-half and that *that* of Amos, Elizabeth and Mack one-sixth each, and that the court should have held that the title descended under Section 21 of the Enabling Act of the State of Oklahoma, 34 Stat. 277, according to the laws of descent and distribution of that state whereby Annie, Amos, Elizabeth and Mack would each receive one-fourth of the land. But since by virtue of the conclusion that the guardian's deed of the interests of the appellants Amos and Elizabeth is valid and that the title to all their interest in the land has passed to the respondents Lightsey and Taylor, these minors have no longer any interest in this assignment and it is here dis-

missed. Neither the respondent Mack Francis, nor the present owners of his share, Gertrude Womack and Eugene W. Gill, have appealed from the decree below or challenged the decision of this question by the court below. That decision was in favor of Lightsey and Taylor who now hold the interests of Annie, Amos and Elizabeth and so it is that that question is not longer here for determination and the decree below is affirmed, with costs against the appellants.

Filed April 30, 1918.

(*Decree.*)

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1918.

MONDAY, May 6, 1918.

No. 4911.

ANNIE HARRIS, Formerly Annie Francis, and AMOS FRANCIS and Elizabeth Francis, Appearing by W. C. Franklin, Their Guardian Ad Litem, Appellants,

vs.

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. Lamb, A. B. Miller, Maud Mitchell, W. H. Harris, L. A. Bell, H. L. Lightsey, John R. Taylor, Mack Francis, J. Orlando Mitchell, Howell H. Brown, Thomas W. Daniel, Laura L. McGinnis, Harry F. Eagan, Eugene W. Gill, John V. McMahon, J. S. Kirkpatrick, R. C. Martin, H. M. Kirkpatrick, Gertrude Womack, A. W. Shulthis, W. H. Whitford, R. L. Ebling, and Hoppy Toad Oil and Gas Company.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that Harry H. Bell, J. A. Wood, H. R. Pierson, A. C. Brady, Frank F. Lamb, A. B. Miller, Maud Mitchell, W. H. Harris, L. A. Bell, H. L. Lightsey, John R. Taylor, Mack Francis, J. Orlando Mitchell, Howell H. Brown, Thomas W. Daniel, Laura L. McGinnis, Harry F. Eagan, Eugene W. Gill, John V. McMahon, J. S. Kirkpatrick, R. C. Martin, H. M. Kirkpatrick, Gertrude Womack, A. W. Shulthis, W. H. Whitford, R. L. Ebling and Hoppy Toad Oil and Gas Company have and recover against Annie Harris, formerly Annie Francis, and Amos Francis and Elizabeth Francis, appearing by W. C. Franklin, their guardian ad litem, the sum of twenty dollars for their costs herein and have execution therefor.

May 6, 1918.

(Petition for Appeal and Assignment of Errors on Appeal to Supreme Court U. S.)

Petition for Appeal to Supreme Court U. S.

Annie Harris, formerly Annie Francis, Amos Francis and Elizabeth Francis, minors, and W. C. Franklin, their guardian ad litem, appellants as above named, by their solicitors of record, James C. Davis, Creek National Attorney, and P. J. Carey, conceiving themselves aggrieved by the decision and decree of the United States Circuit Court of Appeals for the Eighth Circuit made on the 6th day of May in the above entitled cause, do hereby appeal from said decision and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herewith, and pray that this appeal may be allowed, and that a transcript of the records and proceedings in said cause, with all things concerning the same duly authenticated, may be sent to the Supreme Court of the United States.

JAMES C. DAVIS,
Creek National Attorney;
P. J. CAREY,
Solicitors for Appellants.

Assignment of Errors on Appeal to Supreme Court U. S.

Now come Annie Harris, formerly Annie Francis, Amos Francis, and Elizabeth Francis, Minors, and W. C. Franklin, guardian ad litem for said minors, appellants, by their solicitors of record, James C. Davis, Creek National Attorney, and P. J. Carey, and say that in the record and proceedings in this cause there is manifest error, and that the United States Circuit Court of Appeals for the Eighth Circuit erred in this, to-wit:

I.

The Court erred in affirming the judgment and decree of the District Court of the United States for the Eastern District of Oklahoma, made and entered of record on the 22nd day of July, 1916, with costs against the appellants herein.

II.

The Court erred in not reversing the said decree of the said United States District Court for the Eastern District of Oklahoma made and entered for the appellees herein on the 22nd day of July, 1916.

III.

The Court erred in holding, deciding and decreeing that Annie Harris, formerly Annie Francis, mother of the deceased allottee,

Freeland Francis, and Amos Francis, a brother of said deceased allottee, and Elizabeth Francis, a sister of said deceased allottee, and Mack Francis, a half brother of said deceased allottee, took the allotment of said deceased allottee, selected and allotted in the name of said deceased allottee, Freeland Francis, after his death, as heirs and not as allottees.

IV.

The Court erred in holding, deciding and decreeing that the said Annie Harris, formerly Annie Francis, mother of said deceased allottee, and the said Amos Francis, brother of said deceased allottee, and the said Elizabeth Francis, sister of the said deceased allottee, and the said Mack Francis, half brother of the said deceased allottee, were not prohibited from alienating their interests in the land, selected and allotted to the said deceased allottee after his death, by Sections 5 and 19 of the Act of Congress approved April 26, 1906 (34 Stat., 138-144).

V.

The Court erred in holding, deciding and decreeing that the deed made by Annie Francis to Laura L. McGinnis, dated January 15, 1908, and approved by the Secretary of the Interior of the United States of America on July 6, 1910, was a valid and subsisting conveyance of her interest in the property, notwithstanding the passage and approval of the Act of Congress of May 27, 1908 (35 Stat., 312-315, prior to the approval of said deed by the Secretary of the Interior, by which Act of Congress, under Section 9 thereof, the power of the Secretary of the Interior to approve such conveyances was revoked.

VI.

The Court erred in not holding, deciding and decreeing that the passage and approval of the Act of Congress of May 27, 1908 (35 Stat., 312-315) revoked the power and authority of the Secretary of the Interior to approve the said deed dated January 15, 1908, made by said Annie Francis to the said Laura L. McGinnis, and in not holding, deciding and decreeing that the County Court having jurisdiction of the settlement of the estate of the said deceased allottee had the sole power and authority to approve said deed.

VII.

The Court erred in not holding, deciding and decreeing that the said Act of Congress of May 27, 1908 repealed the provisions of Section 22 of the Act of Congress of April 26, 1906 regarding the approval by the Secretary of the Interior of deeds made by the adult full blood heirs of deceased allottees, and in not holding, deciding and decreeing that the said Act of May 27, 1908 deprived the Secretary of the Interior of power to approve deeds made before the passage of said Act.

VIII.

The Court erred in holding, deciding and decreeing that the deed of the guardian of the minor heirs, Amos Francis and Elizabeth Francis, made to the appellees H. L. Lightsey and John R. Taylor, pursuant to an order of the County Court of Okmulgee County, Oklahoma, dated January 22, 1912, conveying the interests of the said minor heirs in and to said allotment to the said appellees, and that the order of the said County Court of Okmulgee County, Oklahoma, confirming the sale thereof was effective to convey the said interests of the said minor heirs to the said appellees, Lightsey and Taylor.

IX.

The Court erred in holding, deciding and decreeing that the Act of May 27, 1908 conferred power and jurisdiction upon the County Court of Okmulgee County, Oklahoma as the Court having jurisdiction of the persons and estates of said minor heirs, unrestricted power to order the sale and conveyance of the interests of the said minor heirs in and to the allotment, and that such deed was valid without the approval of the County Court of Wagoner County, in which said latter County Freeland Francis had his domicile at the date of his death.

X.

The Court erred in not holding, deciding and decreeing that the said deed of the guardian of the said minor heirs, dated January 22, 1912, made pursuant to the orders of the County Court of Okmulgee County, Oklahoma, to the said appellees, Lightsey and Taylor, were void for want of approval by the County Court of Wagoner County, Oklahoma, the Court having jurisdiction of the settlement of the estate of said deceased allottee, Freeland Francis.

XI.

The Court erred in holding, deciding and decreeing that Section 6 of the Act of Congress of May 27, 1908 governs the sale and conveyance of inherited lands of minor full blood heirs of deceased members of the Five Civilized Tribes, and that the proviso of Section 9 of said Act governs the sale and conveyance of inherited lands by full blood adult heirs of deceased members of said tribes.

XII.

The Court erred in holding, deciding and decreeing that Section 9 of the said Act of Congress approved May 27, 1908 has no application to the sale and conveyance of inherited lands by full blood minor heirs of deceased members of the Five Civilized Tribes.

XIII.

The Court erred in holding that Section 6 of the said Act of May 27, 1908 governs the sale and conveyance of inherited lands by

minor full blood heirs of deceased members of the Five Civilized Tribes, and not Section 9 of said Act.

XIV.

The Court erred in holding, deciding and decreeing that the true interpretation of the Act of May 27, 1908 is that the conveyances of full blood adult heirs are subject to the first proviso of Section 9, but that that proviso is inapplicable to guardians' conveyances of the interests of minor full blood Indian heirs which have been regularly made pursuant to the orders of the County Courts of Oklahoma which had jurisdiction of the subject matters and the parites to the proceedings before them in which they were ordered, and that the guardian's deed of the interest of the minors Amos Francis and Elizabeth Francis was a valid conveyance without the approval of the County Court which might have had jurisdiction of the settlement of the estate of Freeland Francis whose heirs they are.

XV.

The Court erred in holding, deciding and decreeing that the true construction of Section 9 of the Act of May 27, 1908 is that it is prospective and not retrospective in effect, and that it applies to conveyances made after its passage, and is inapplicable to those made before its enactment.

Wherefore, appellants pray that such judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit be reversed, and that the Supreme Court of the United States render such proper decree as shall conform to the facts disclosed by the record and the law applicable thereto.

JAMES C. DAVIS,
Creek National Attorney;
P. J. CAREY,
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jul- 5, 1918.

(*Order Allowing Appeal to Supreme Court U. S., etc.*)

Upon reading the petition for the appeal to the Supreme Court in this case and the request to accept Five Hundred Dollars ($500.00) in cash in lieu of a bond for costs on the appeal,

It is hereby ordered, that the appeal in the above entitled cause from the decree in the United States Circuit Court of Appeals for the Eighth Circuit to the Supreme Court of the United States be, and the same is hereby, allowed upon the appellants' deposit with the clerk of this court of the sum of Five Hundred Dollars ($500.00) in lieu of a bond on appeal for costs, but this appeal and deposit shall not act as a supersedeas in any event and in case the check for $500. on the Treasurer of the United States, dated June 30, 1918, No. 8520, payable to the order of Eugene E. Koch, Clerk of the United

States Circuit Court of Appeals, Eighth Circuit, Missouri, which is now accepted temporarily in lieu of the $500. deposit because this is the last day for the appeal, should not be paid to the clerk, on demand a motion to revoke this order may be made and considered.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Judicial Circuit.

Dated July 5, 1918.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jul. 5, 1918.

Citation.

Miscellaneous. Received Jul- 17, 1918. No. 60080. Encl. to Sup't Five Civilized Tribes.

The United States of America to Harry H. Bell, J. A. Wood, H. R. Pierson, A. C. Brady, Frank F. Lamb, A. B. Miller, Maude Mitchell, W. H. Harris, L. A. Bell, H. L. Lightsey, John R. Taylor, Mack Francis, J. Orlando Mitchell, Howell H. Brown, Thomas W. Daniel, Laura L. McGinnis, R. C. Martin, H. M. Kirkpatrick, J. S. Kirkpatrick, John V. McMahon, A. W. Shulthis, E. J. Lambert, W. H. Whitford, R. L. Ebling, Gertrude Womack, Harry F. Eagan, Eugene W. Gill, and The Hoppy Toad Oil & Gas Company, a Corporation:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C. within thirty days from and after the date hereof pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, from a judgment rendered in a cause wherein Annie Harris, formerly Annie Francis, Amos Francis and Elizabeth Francis, minors, by W. C. Franklin, guardian ad litem are appellants, and Harry H. Bell, J. A. Wood, H. R. Pierson, A. C. Brady, Frank F. Lamb, A. B. Miller, Maude Mitchell, W. H. Harris, L. A. Bell, H. L. Lightsey, John R. Taylor, Mack Francis, J. Orlando Mitchell, Howell H. Brown, Thomas W. Daniel, Laura L. McGinnis, R. C. Martin, H. M. Kirkpatrick, J. S. Kirkpatrick, John V. McMahon, A. W. Shulthis, E. J. Lambert, W. H. Whitford, R. L. Ebling, Gertrude Womack, Harry F. Eagan, Eugene W. Gill and The Hoppy Toad Oil & Gas Company, a corporation, are appellees, to show cause, if any there be, why the decree affirming the judgment of the United States District Court for the Eastern District of Oklahoma in the above entitled cause, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Judicial Circuit, at St. Paul, Minnesota, this fifth day of July, 1918.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Judicial Circuit.

[Endorsed:] No. 4911. In the United States Circuit Court of Appeals for Eighth Circuit. Annie Harris, formerly Francis, et al., appellants, vs. Harry H. Bell, et al. Citation on Appeal to Supreme Court, U. S. Filed Jul- 22, 1918. E. E. Koch, clerk.

Miscellaneous. Received Jul- 17, 1918. No. 60080. Encl. to Sup't Five Civilized Tribes.

Acknowledgment of Service of Citation on Appeal to Supreme Court of the United States.

Service of the citation issued on the 5th day of July, 1918, by the Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Judicial Circuit, citing appellees in the case of Annie Harris, formerly Annie Francis, et al., Appellants, vs. Harry H. Bell, et al., to be and appear in the Supreme Court of the United States at Washington, D. C. within thirty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 16th day of July, 1918, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation.

W. H. HARRIS.

[Endorsed:] United States Circuit Court of Appeals, Eighth Circuit. No. 4911. Annie Harris, et al., Appellants, vs. Harry H. Bell, et al. Acknowledgment of service of citation on appeal to Supreme Court, U. S., by the appellee, W. H. Harris. Filed Jul- 22, 1918. E. E. Koch, clerk.

Acknowledgment of Service of Citation on Appeal to Supreme Court of the United States.

Service of the citation issued on the 5th day of July, 1918, by the Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Judicial Circuit, citing appellees in the case of Annie Harris, formerly Annie Francis, et al., Appellants, vs. Harry H. Bell, et al.; to be and appear in the Supreme Court of the United States at Washington, D. C. within thirty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 13 day of July, 1918, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation.

R. C. MARTIN, *Pro Se.*
H. L. LIGHTSEY AND
J. R. TAYLOR,
By R. C. MARTIN,
Their Att'y.

July 19" 1918.

Service of the above citation is this day accepted.

KIRKPATRICK & KIRKPATRICK,
Attorneys.

THOMAS W. DANIEL,
By JNO. S. KIRKPATRICK,
His Att'y.

[Endorsed:] United States Circuit Court of Appeals, Eighth Circuit. No. 4911. Annie Harris, et al., Appellants, vs. Harry H. Bell, et al. Acknowledgment of service of citation on appeal to Supreme Court, U. S., by appellees, R. C. Martin, et al. Filed Jul- 22, 1918. E. E. Koch, clerk.

Acknowledgment of Service of Citation on Appeal to Supreme Court of the United States.

Service of the citation issued on the 5th day of July, 1918, by the Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Judicial Circuit, citing appellees in the case of Annie Harris, formerly Annie Francis, et al., Appellants, vs. Harry H. Bell, et al., to be and appear in the Supreme Court of the United States at Washington, D. C. within thirty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 12th day of July, 1918, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation.

HOPPY TOAD OIL CO.,
By J. E. THRIFT, *Att'y.*

[Endorsed:] United States Circuit Court of Appeals, Eighth Cir- Harris, formerly Annie Francis, et al., Appellants, vs. Harry H. Bell, et al. Acknowledgment of service of citation on appeal to Supreme Court, U. S., by appellee Hoppy Toad Oil Co. Filed Jul- 22, 1918. E. E. Koch, clerk.

Acknowledgment of Service of Citation on Appeal to Supreme Court of the United States.

Service of the citation issued on the 5th day of July, 1918, by the Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Judicial Circuit, citing appellees in the case of Annie Harris, formerly Annie Francis, et al., Appellants, vs. Harry H. Bell, et al., to be and appear in the Supreme Court of the United States at Washington, D. C. within thirty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 11th day of July, 1918, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation.

HARRY F. EAGAN.

[Endorsed:] United States Circuit Court of Appeals, Eighth Circuit. No. 4911. Annie Harris, et al., Appellants, vs. Harry H. Bell, et al. Acknowledgment of service of citation on appeal to Supreme Court of the United States by the appellee, Harry F. Eagan. Filed Jul- 22, 1918. E. E. Koch, clerk.

Acknowledgment of Service of Citation on Appeal to Supreme Court of the United States.

Service of the citation issued on the 5th day of July, 1918, by the Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Judicial Circuit, citing appellees in the case of Annie Harris, formerly Annie Francis, et al., Appellants, vs. Harry H. Bell, et al., to be and appear in the Supreme Court of the United States at Washington, D. C. within thirty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 11 day of July, 1918, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation.

FRANK F. LAMB,
Att'y for F. F. Lamb, A. C. Brady, and E. W. Gill.

[Endorsed:] United States Circuit Court of Appeals, Eighth Circuit. No. 4911. Annie Harris, et al., Appellants, vs. Harry H. Bell, et al. Acknowledgment of service of citation on appeal to Supreme Court, U. S., by appellees F. F. Lamb, et al. Filed Jul- 22, 1918. E. E. Koch, clerk.

Acknowledgment of Service of Citation on Appeal to Supreme Court of the United States.

Service of the citation issued on the 5th day of July, 1918, by the Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Judicial Circuit, citing appellees in the case of Annie Harris, formerly Annie Francis, et al., Appellants, vs. Harry H. Bell, et al., to be and appear in the Supreme Court of the United States at Washington, D. C. within thirty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 11th day of July, 1918, and the undersigned appellees acknowledge the receipt by *them* of a ful, true and complete copy of said citation.

BELFORD & HIATT,
Att'ys for Gertrude Womack.

[Endorsed:] United States Circuit Court of Appeals, Eighth Circuit. No. 4911. Annie Harris, et al., Appellants, vs. Harry H. Bell, et al. Acknowledgment of service of citation on appeal to Supreme Court, U. S., by appellee Gertrude Womack. Filed Jul- 22, 1918. E. E. Koch, clerk.

Acknowledgment of Service of Citation on Appeal to Supreme Court of the United States.

Service of the citation issued on the 5th day of July, 1918, by the Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Judicial Circuit, citing appellees in the case of Annie Harris, formerly Annie Francis, et al., Appellants, vs. Harry H. Bell, et al., to be and appear in the Supreme Court of the United States at Washington, D. C. within thirty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 15th day of July, 1918, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation.

WM. M. MATTHEWS,
GEO. S. RAMSEY,
Att'ys for A. W. Shulthis, E. J. Lambert, W. H. Whitford, R. L. Ebling.

[Endorsed:] United States Circuit Court of Appeals, Eighth Circuit. No. 4911. Annie Harris, et al., Appellants, vs. Harry H. Bell, et al. Acknowledgment of service of citation on appeal to Supreme Court, U. S., by appellees, A. W. Shulthis, et al. Filed Jul- 22, 1918. E. E. Koch, clerk.

Acknowledgment of Service of Citation on Appeal to Supreme Court of the United States.

Service of the citation issued on the 5th day of July, 1918, by the Honorable Walter H. Sanborn, Senior United States Circuit Judge for the Eighth Judicial Circuit, citing appellees in the case of Annie Harris, formerly Annie Francis, et al., Appellants, vs. Harry H. Bell, et al., to be and appear in the Supreme Court of the United States at Washington, D. C. within thirty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said cause, is acknowledged to have been made upon the undersigned appellees on this 15th day of July, 1918, and the undersigned appellees acknowledge the receipt by them of a full, true and complete copy of said citation.

HARRY H. BELL,
By N. A. GIBSON,
His Solic'r.

[Endorsed:] United States Circuit Court of Appeals, Eighth Circuit. No. 4911. Annie Harris, et al., Appellants, vs. Harry H. Bell, et al. Acknowledgment of service of citation on appeal to Supreme Court, U. S., by appellee Harry H. Bell. Filed Jul- 22, 1918. E. E. Koch, clerk.

(*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals, wherein Annie Harris, formerly Annie Francis, et al., were Appellants, and Harry H. Bell, et al., were Appellees, No. 4911, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the check for $500.00 on the Treasurer of the United States, dated June 30, 1918, No. 8520, payable to the Clerk of this Court, in lieu of a bond on appeal for costs as provided in the order allowing the appeal in this cause to the Supreme Court of the United States, has been paid and said amount is now being held by me as Clerk as a special deposit in said cause.

I do further certify that the original citation on appeal and acknowledgments of service are hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-fourth day of July, A. D. 1918.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH.
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 26,697. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 611. Annie Harris, formerly Annie Francis, et al., appellants, vs. Harry H. Bell et al. Filed August 12th, 1918. File No. 26,697.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 186.

ANNIE HARRIS, Formerly ANNIE FRANCIS; AMOS FRANCIS and ELIZABETH FRANCIS, Minors, Appearing by W. C. FRANKLIN, Guardian *Ad Litem*, - - - - - - - - - *Appellants*,

vs.

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. LAMB, A. B. MILLER, MAUDE MITCHELL, W. H. HARRIS, L. A. BELL, H. L. LIGHTSEY, JOHN R. TAYLOR, MACK FRANCIS, J. ORLANDO MITCHELL, HOWELL H. BROWN, THOMAS W. DANIEL, LAURA L. McGINNIS, R. C. MARTIN, H. M. KIRKPATRICK, J. S. KIRKPATRICK, JOHN V. McMAHON, A. W. SHULTHIS, E. J. LAMBERT, W. H. WHITFORD, R. L. EBLING, GERTRUDE WOMACK, HARRY F. EAGAN, EUGENE W. GILL and THE HOPPY-TOAD OIL & GAS COMPANY, a Corporation, - *Appellees.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

Page

STATEMENT OF THE CASE 2

SPECIFICATIONS OF ERROR 17

BRIEF AND ARGUMENT 23

Propositions discussed:

That the land, selected by the Commission to the Five Civilized Tribes for Freeland Francis after his death on December 4, 1907, passed to his mother, Annie, and his brothers and sister, Mack, Amos and Elizabeth, as original allottees, restricted as to alienation, and, therefore, that the deeds executed by Annie Harris, formerly Annie Francis, to Laura L. McGinnis, and the guardian's deed, executed by W. J. Cook, under the orders of the County Court of Okmulgee County, Oklahoma, to Lightsey and Taylor, were ineffective to convey title.

That said land passed to the said Annie, Mack, Amos and Elizabeth, as heirs of Freeland Francis, and that said deeds were ineffective to convey title because not approved by the court having jurisdiction of the settlement of the estate of said Freeland Francis.

That the guardian's deed, executed by W. J. Cook under the orders of the County Court of Okmulgee County, Okla., to Lightsey and Taylor, was ineffective to convey the title of Amos and Elizabeth, because the lands thereby attempted to be conveyed were restricted lands of living minors.

I.

Appellants Took as Allottees 24

II.

If appellants did not take as original allottees, they did take as heirs of the full-blood 47

III.

Restricted lands of LIVING minors cannot be sold by order of court, or otherwise. 68

INDEX—Continued.

AUTHORITIES: Page

Act of April 26, 1906 (34 Stat. 137), Secs. 5, 19, 22 ...34, 35, 43, 49
Act of May 27, 1908 (35 Stat. 312), Secs. 1, 5, 6, 9 .....50, 69
Bowling v. United States, 233 U. S. 528.....84, 88
Brader v. James, 246 U. S. 88.....47, 79, 95
Bruner v. Nordmeyer et al., 166 Pac. 126..... 42
Campbell v. Wadsworth, 39 Sup. Ct. Rep. 63..... 59
Chupco v. Chapman, 170 Pac. 259..... 82
Daviess v. Fairbairn, 3rd How. 636..... 52
Gannon v. Johnson, 243 U. S. 108..... 83
Heckman v. U. S., 224 U. S. 413..... 80
Indian Appro. Act, March 3, 1905 (33 Stat. 1048) 27
Kohlstaat v. Murphy, 96 U. S. 153..... 52
Marcy v. B'd. Commissioners, 45 Okla. 1 73
Okla Oil Co. v. Bartlett, 236 Fed. 488 64
Original Creek Agreement, March 1, 1901 (31 Stat. 861), Sec. 28 29
Parker v. Richard, U. S. Sup. Ct. June 2, 1919.....65, 74, 79
Pickering v. Lomax, 145 U. S. 310-315..... 52
Supplemental Creek Agreement, June 30, 1902 (32 Stat. 500), Sec. 7..... 29
Supplemental Agreement, Sec. 16 31
Talley v. Burgess, 246 U. S. 104..... 90
Tiger v. Western Inv. Co., 221 U. S. 286 42
Truskett v. Closser, 236 U. S. 233..... 61
U. S. v. Hinkle, C. C. A. 8th Cir., Sept 1, 1919..... 77
U. S. v. Nice, 241 U. S. 591..... 80

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 186.

ANNIE HARRIS, Formerly ANNIE FRANCIS; AMOS FRANCIS and ELIZABETH FRANCIS, Minors, Appearing by W. C. FRANKLIN, Guardian *Ad Litem*, - - - - - - - - - *Appellants*,

vs.

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. LAMB, A. B. MILLER, MAUDE MITCHELL, W. H. HARRIS, L. A. BELL, H. L. LIGHTSEY, JOHN R. TAYLOR, MACK FRANCIS, J. ORLANDO MITCHELL, HOWELL H. BROWN, THOMAS W. DANIEL, LAURA L. McGINNIS, R. C. MARTIN, H. M. KIRKPATRICK, J. S. KIRKPATRICK, JOHN V. McMAHON, A. W. SHULTHIS, E. J. LAMBERT, W. H. WHITFORD, R. L. EBLING, GERTRUDE WOMACK, HARRY F. EAGAN, EUGENE W. GILL and THE HOPPY-TOAD OIL & GAS COMPANY, a Corporation, - *Appellees.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF *on* BEHALF *of* APPELLANTS.

Statement of the Case.

This suit was originally instituted in the District Court of Okmulgee County, Oklahoma, but, upon petition and bond for removal, it was transferred to the United States District Court for the Eastern District of Oklahoma. The transcript was filed in the latter court on the 18th day of October, 1913, and the cause came on for trial on the 25th day of May, 1915, on the amended petition (Tr. Rec., p. 2), filed in the state court, and the several answers and cross bills thereto filed by defendants in the United States Court.

By her amended petition the plaintiff sought to have the title to the real estate therein described quieted in herself, and to have cancelled and annulled certain instruments affecting the title to said real estate, all of which said instruments are recited in the amended petition. The several answering defendants denied plaintiff's title to the property in question and claimed title in themselves, certain of them claiming title not only as against the plaintiff but as against each other.

No question was raised on the pleadings in the District Court, and no question of that kind is presented for the consideration of this court. It is conceded by appellants that the pleadings were sufficient in form and substance and, consequently, a synopsis of them will be omitted.

The case was tried by the District Court upon an agreed statement of facts (Tr. Rec., pp. 116-121), certain oral testimony offered in behalf of appellant, Annie Francis (Tr. Rec., pp. 121-134), certain oral testimony offered in behalf of defendant Harry H. Bell (Tr. Rec., pp. 134-153), and certain oral testimony offered in behalf of defendant A. W. Shulthis (Tr. Rec., pp. 154-159). By order of the District Court (Tr. Rec., p. 175) appellants were permitted to incorporate the oral testimony in the record and reproduce the exact words of the witnesses in the transcript on appeal. The reason for this order will appear later.

As disclosed by the pleadings, the agreed statement of facts and the evidence, Freeland Francis was a citizen of the Creek Nation. He was born on the 30th day of April, 1903, and died on the 22nd day of June, 1905, without issue and unmarried. On the 10th day of June, 1905, he was enrolled as a citizen of the Creek Nation, of three-quarter Indian blood, opposite roll No. N. B. 1070. No selection of an allotment in his lifetime was made, either by himself or any person on his behalf, but on the 4th day of December, 1907, there was selected and allotted in his name, by the Commission to the Five Civilized Tribes, as his distributive share of the tribal lands of the Creek Nation, the land described as follows, to-wit:

> The East Half of the Southeast Quarter, and the Southwest Quarter of the Southeast Quarter of Section 25, and the Southeast Quarter of the Southwest Quarter of Section 26, all in Township 16 North, Range 13 East,

lying in Okmulgee County, Oklahoma. On the 10th day of December, 1908, homestead (Tr. Rec., p. 11), and allotment (Tr. Rec., p. 13), deeds were executed by the Principal Chief of the Creek Nation conveying said described lands to the said Freeland Francis, and these deeds were approved by the Secretary of the Interior on the 25th day of March, 1909.

William Francis and Annie Francis, subsequently Annie Harris, plaintiff in the original petition, were duly enrolled citizens of the Creek Nation, were husband and wife, and were the parents of Freeland Francis. They were also the parents of Amos and Elizabeth Francis, Freeland having been a full brother of Amos and Elizabeth.

On the 6th day of April, 1905, William Francis died intestate leaving him surviving, his widow, Annie Francis, now Annie Harris, and their three children, Amos, Elizabeth and Freeland. Besides the three children named, William Francis left him surviving his son, Mack Francis, born of a former marriage with Silla, a citizen of the Creek Nation. Mack Francis was likewise an enrolled and allotted citizen of the Creek Nation, and was a half brother of

Amos, Elizabeth and Freeland Francis. He attained his majority on the 6th day of April, 1910.

Upon the death of Freeland Francis, June 22, 1905, he left him surviving his mother, Annie, his brother and sister, Amos and Elizabeth, all appellants herein, and his half-brother Mack Francis.

William Francis, the father of the four children, was enrolled as a half blood, and Annie, the mother of Amos, Elizabeth and Freeland, was enrolled as a full blood. Amos and Elizabeth Francis were enrolled as full bloods, Freeland Francis was enrolled as three-quarter bood, and Mack Francis was enrolled as of one-half blood. It is important that the degree of blood of these four persons, as shown by the enrollment records, be borne in mind.

At the date of the institution of suit Annie Francis, the widow, had intermarried with Willie Harris. Amos and Elizabeth, the children, were minors, and Mack, the son of William Francis by a former marriage, had reached the age of twenty-one years.

The land above described as having been allotted to Freeland Francis by the Commission to the Five Civilized Tribes was, and is, the land in controversy in the cause.

On the 25th day of March, 1907, the United States Court for the Western District of Indian Territory, sitting at Muskogee, appointed William J.

Cook administrator of the estate of Freeland Francis, and upon the advent of statehood the County Court of Muskogee County, Oklahoma, assumed jurisdiction of the administration of the estate. It does not appear by the transcript of record in what manner, whether by general or special order, or otherwise, the administration of the estate was lodged in said County Court.

On the 10th day of March, 1907, W. J. Cook was appointed guardian of the persons and estates of Amos and Elizabeth Francis, minors, by the United States Court for the Western District of Indian Territory, sitting at Muskogee, and, following statehood, said guardianship was transferred to the County Court of Okmulgee County, where the same was pending at the institution of this suit.

On February 17, 1915, the United States Court for the Eastern District of Oklahoma, made and entered of record an order (Tr. Rec., p. 88), appointing W. C. Franklin, guardian *ad litem,* for Amos and Elizabeth Francis, and directed him to file an answer in this cause as such guardian *ad litem* for said minors.

On the 15th day of January, 1908, appellant, Annie Harris, executed a deed to the defendant, Laura L. McGinnis, conveying to her the above described allotment of Freeland Francis, and on the 31st day

of December, 1909, this deed was filed in the office of the United States Indian Agent, at the Union Agency in Muskogee, together with an application for the approval thereof by the Secretary of the Interior, and pursuant to the application, the deed was transmitted to the Secretary of the Interior at Washington.

On the 6th day of July, 1910, the Secretary of the Interior entered upon said deed the endorsement following:

> "The conveyance by Annie Francis, of her interest as full-blood Indian heir, in and to the within described lands allotted to Freeland Francis, a New Born Creek citizen, Roll No. 1070, who died prior to May 27th, 1908, is hereby approved, in accordance with the provisions of the Act of Congress approved April 26, 1906. (Signed) Frank Pierce, First Assistant Secretary of the Interior." (Tr. Rec., p. 118.)

The Secretary of the Interior returned said deed, so endorsed, to the United States Indian Agent at Muskogee, together with his letter of transmittal (Tr. Rec., p. 159A).

On the 8th day of January, 1909, the defendant, Laura L. McGinnis, executed a warranty deed conveying said described tract of land to H. L. Lightsey and John R. Taylor, and on the 15th day of January, 1912, W. J. Cook, as guardian of Amos and Elizabeth Francis, executed, under orders of the County Court

of Okmulgee County, Oklahoma, a guardian's deed conveying their interest in the same property to the same defendants, H. L. Lightsey and John R. Taylor. Subsequently this latter deed, so executed by the guardian W. L. Cook, was filed in the office of the United States Indian Agency, together with an application for its approval by the Secretary of the Interior, and, thereafterwards, on the 8th day of October, 1912, the Secretary of the Interior entered upon said deed the endorsement following:

> "Department of the Interior, Washington, D. C., October 8th, 1912. The approval refused, the grantors having, subsequent to the death of Freeland Francis, taken the land described in the within deed as allottees in their own rights instead of by ancestral descent, who were at the time of the attempted conveyance without authority to alienate the same, in the absence of an order removing restrictions. (Signed) Samuel Adams, First Assistant Secretary of the Interior." (Tr. Rec., p. 119.)

The sale, pursuant to which this deed was made, was duly confirmed by an order (Tr. Rec., p. 159B), of the County Court of Okmulgee County, Oklahoma.

On the 5th day of April, 1913, defendants, Lightsey and Taylor, with others, executed to the defendant, A. W. Shulthis, an oil and gas lease covering said described land.

On the 27th day of February, 1913, appellant, Annie Harris, executed to the defendant, H. H. Bell, a deed conveying to him all her interest in the land in controversy, which deed was approved on February 27, 1913, by Mark L. Bozarth, County Judge of Okmulgee County, Oklahoma (Tr. Rec., p. 159K), and on February 28th, 1913, by Thomas W. Leahy, County Judge of Muskogee County, Oklahoma (Tr. Rec., p. 159M).

On the 9th day of April, 1910, Mack Francis, then of age, by warranty deed (Tr. Rec., p. 159S), conveyed all his right, title and interest in and to said described land to Maud Mitchell, and on the 17th day of September, 1911, Maud Mitchell died a resident of Muskogee County, Oklahoma, intestate leaving her surviving, her husband, J. Orlando Mitchell, and her daughter, the defendant, Gertrude Womack, and no other descendants; and by warranty deed dated May 1st, 1912, J. Orlando Mitchell conveyed all his right, title and interest in and to said land, to Howell H. Brown, who, in turn, by warranty deed, dated October 5th, 1912, conveyed the same to Harry F. Eagan, and the said Harry F. Eagan, by quit-claim deed, dated May 9th, 1913, conveyed the same to defendant, Eugene W. Gill.

The above mentioned instruments of conveyance were duly acknowledged before an officer authorized by law to take acknowledgments, and were

seasonably recorded in the office of the Register of Deeds, within and for Okmulgee County, Oklahoma, in which said county the land conveyed is situated.

Numerous other conveyances are mentioned in the pleadings, but those above specifically described are the only conveyances requiring notice on this appeal.

The oral evidence conclusively established the fact that, at the date of his death, Freeland Francis resided with his mother and was domiciled with her in that part of the Creek Nation now constituting Wagoner County, Oklahoma (Tr. Rec., testimony of Annie Harris, p. 122, and testimony of Rufus Tucker, pp. 132, 134).

About the 13th day of April, 1913, defendant, A. W. Shulthis, entered in possession of the land in controversy, under the oil and gas lease obtained by him from defendants, Lightsey and Taylor, and expended thereon in improvements and development work, approximately the sum of Thirty-eight Thousand ($38,000) Dollars.

The defendants, Kirkpatrick, Martin and Daniel, possess a contractual interest in the land in controversy derived from defendants, Lightsey and Taylor, by reason of a certain agreement executed by and between them (Tr. Rec., pp. 37-39), and the defendants Whitford, Lambert and Ebling, by their

answer (Tr. Rec., p. 46), disclaim any interest whatsoever in and to said land.

On the 22nd day of July, 1916, the District Court for the Eastern District of Oklahoma rendered judgment (Tr. Rec., pp. 165-169) in the cause and found the facts to be practically as above recited. The court further found that the devolution of the estate of Freeland Francis was governed and controlled by the Arkansas law of descent and distribution, and upon the issuance of the certificate of allotment, the mother, Annie, inherited and became seized in fee simple of an undivided one-half interest in and to said land, and that Elizabeth, Amos and Mack, sister and brothers, respectively, inherited and became seized of an undivided one-sixth interest, each, therein; that the defendants, J. A. Wood, H. R. Pierson, H. E. Brady, Frank F. Lamb, W. H. Harris, Howell H. Brown and Harry L. Eagan, had no right, title or interest in and to said land.

Thereupon the court decreed, in part, as follows:

> "*It Is, Therefore, Ordered, Adjudged and Decreed,* That the plaintiff take nothing by her petition; that the defendants H. L. Lightsey and John R. Taylor, be and are hereby adjudged to be the owners of an undivided five-sixth (5/6) interest in and to the above described premises, subject to the oil and gas lease of the defendant, A. W. Shulthis; that the said defendant, A. W. Shulthis, is adjudged to be the owner of a

good and valid oil and gas mining lease upon the five-sixth (5/6) interest owned by the said Lightsey & Taylor; that the said defendant, Eugene W. Gill, be and is hereby adjudged to be the owner of an undivided one-twelfth (1/12) interest in said premises, and that Gertrude Womack is adjudged to be the owner of an undivided one-twelfth (1/12) interest therein. And that the title of these defendants be forever quieted against the claims of the plaintiff, and against the claims of the other defendants; that the deed executed by the plaintiff, Annie Harris, to the defendant, Harry H. Bell, on the 27th day of February, 1913, be canceled, set aside and held for naught, and that the oil and gas mining lease executed by W. J. Cook, as guardian of the defendant, Amos Francis and Elizabeth Francis, to the Hoppy-Toad Oil & Gas Company, be canceled, set aside and held for naught, and that the plaintiff and defendants, Harry H. Bell, Hoppy-Toad Oil & Gas Company, J. A. Wood, H. R. Pierson, H. E. Brady, Frank F. Lamb, W. H. Harris, Howell H. Brown and Harry L. Eagan be forever enjoined from asserting any claim or title to the above described premises." (Tr. Rec., pp. 168, 169.)

It will thus be seen that the deed executed by appellant, Annie Harris, to defendant, Laura L. McGinnis, dated January 15th, 1918, was found by the court to be a valid and binding instrument of conveyance, and that the deed executed by W. J. Cook, as guardian of Amos and Elizabeth Francis, under order of the County Court of Okmulgee County, Okla-

homa, to defendants, H. L. Lightsey and John R. Taylor, dated January 15th, 1912, was likewise found by the court to be a valid and binding instrument of conveyance.

It is our contention that the court was in error in reaching those conclusions, and that the title to the land was, at the date of the institution of the suit, vested in Annie Harris, the mother, and Elizabeth, Amos and Mack Francis, the sister and brothers, respectively, of Freeland Francis, either as original allottees or as his heirs at law.

There was an adjudication of the interests claimed by defendants Harry H. Bell and Hoppy-Toad Oil & Gas Company, the court finding that neither of said parties acquired any interest in and to the land by the respective conveyances executed to them, and decreeing that those conveyances be canceled, set aside and held for naught. Neither of said parties appealed from the findings and decree of the District Court, and the adjudication of the District Court, respecting the interests claimed by them in and to the land, is now final, and cannot be a subject for review by this court.

It will be recalled that Freeland Francis died in that part of the Creek Nation now comprising Wagoner County, Oklahoma, as established by the oral testimony, and that the administration of his estate, begun in the United States District Court for the

Western District of Indian Territory, became lodged, after statehood, in the County Court of Muskogee County. Attention is, therefore, directed to the fact that the deed executed by W. J. Cook, as guardian of the estate of Amos Francis and Elizabeth Francis, under the orders of the County Court of Okmulgee County, Oklahoma, conveying the interests of Amos Francis and Elizabeth Francis in the property to Lightsey and Taylor, was never approved, either by the County Court of Muskogee County in which the administration of the estate of Freeland Francis was pending at the date of the execution of the deed, or by the County Court of Wagoner County, the county in which Freeland Francis died, and that its approval was refused by the Secretary of the Interior (see guardian's deed, Tr. Rec., pp. 159D-159F).

On the 19th day of January, 1917, the plaintiff, Annie Harris, formerly Annie Francis, and the defendants, Amos Francis and Elizabeth Francis, by their guardian, *ad litem*, W. C. Franklin, filed their petition and application for appeal (Tr. Rec., pp. 169, 170) in said cause to this court, together with assignment of errors, and on the same day the appeal prayed in said petition and application was allowed in open court, and bond for costs fixed in the sum of $500, which said bond was given and approved and citation thereafter issued (Tr. Rec., pp. 175, 176), and accepted by all necessary parties, appel-

lee, and the transcript of record was duly printed and duly lodged in this court.

That thereafterwards, to-wit, on the 7th day of December, 1917, the cause came on for hearing in its regular order before the United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Louis, and was submitted to the court on the transcript of the record from said District Court, and the argument of counsel, and their briefs filed therein (Tr. Rec., p. 190).

That thereafterwards, to-wit, on the 30th day of April, 1918, the United States Circuit Court of Appeals filed its opinion in the cause, delivered through Presiding Judge SANBORN, and on the 6th day of May, 1918, said court entered of record its decree affirming the decree of the District Court of the United States for the Eastern District of Oklahoma (Tr. Rec., pp. 191, 192, 193, 194, 195, 196, 197 and 198).

That thereafterwards, to-wit, on the 5th day of July, 1918, plaintiffs filed their petition for appeal, together with their assignment of errors on appeal, to the Supreme Court of the United States from the decree so made and entered of record by the United States Circuit Court of Appeals for the Eighth Circuit, and on the same day the appeal prayed in said petition was allowed, upon appellants' deposit with

the clerk of said United States Circuit Court of Appeals of the sum of $500.00 in lieu of bond on appeal for costs, which said sum of $500.00 was duly deposited with said clerk (Tr. Rec., pp. 199, 200, 201, 202, 203), and citation thereafter issued (Tr. Rec., p. 203), and was accepted by all necessary parties, appellee, and the transcript of record was duly printed, and seasonably lodged in this court.

SPECIFICATIONS *of* ERROR.

I.

The court erred in affirming the judgment and decree of the District Court of the United States for the Eastern District of Oklahoma, made and entered of record on the 22nd day of July, 1916, with costs against the appellants herein.

II.

The court erred in not reversing the said decree of the said United States District Court for the Eastern District of Oklahoma, made and entered for the appellees herein on the 22nd day of July, 1916.

III.

The court erred in holding, deciding and decreeing that Annie Harris, formerly Annie Francis, mother of the deceased allottee, Freeland Francis, and Amos Francis, a brother of said deceased allottee, and Elizabeth Francis, a sister of said deceased allottee, and Mack Francis, a half brother of said deceased allottee, took the allotment of said deceased allottee, selected and allotted in the name of said deceased allottee, Freeland Francis, after his death, as heirs and not as allottees.

IV.

The court erred in holding, deciding and decree-

ing that the said Annie Harris, formerly Annie Francis, mother of said deceased allottee, and the said Amos Francis, brother of said deceased allottee, and the said Elizabeth Francis, sister of the said deceased allottee, and the said Mack Francis, half brother of the said deceased allottee, were not prohibited from alienating their interests in the land, selected and allotted to the said deceased allottee after his death, by sections 5 and 19 of the Act of Congress approved April 26, 1906 (34 Stat. 138-144).

V.

The court erred in holding, deciding and decreeing that the deed made by Annie Francis to Laura L. McGinnis, dated January 15, 1908, and approved by the Secretary of the Interior of the United States of America on July 6, 1910, was a valid and subsisting conveyance of her interest in the property, notwithstanding the passage and approval of the Act of Congress of May 27, 1908 (35 Stat. 312-315), prior to the approval of said deed by the Secretary of the Interior, by which Act of Congress, under section 9 thereof, the power of the Secretary of the Interior to approve such conveyances was revoked.

VI.

The court erred in not holding, deciding and decreeing that the passage and approval of the Act of Congress of May 27, 1908 (35 Stat. 312-315), revoked

the power and authority of the Secretary of the Interior to approve the said deed dated January 15, 1908, made by said Annie Francis to the said Laura L. McGinnis, and in not holding, deciding and decreeing that the County Court having jurisdiction of the settlement of the estate of the said deceased allottee had the sole power and authority to approve said deed.

VII.

The court erred in not holding, deciding and decreeing that the said Act of Congress of May 27, 1908, repealed the provisions of section 22 of the Act of Congress of April 26, 1906, regarding the approval by the Secretary of the Interior of deeds made by the adult full-blood heirs of deceased allottees, and in not holding, deciding and decreeing that the said Act of May 27, 1908, deprived the Secretary of the Interior of power to approve deeds made before the passage of said act.

VIII.

The court erred in holding, deciding and decreeing that the deed of the guardian of the minor heirs, Amos Francis and Elizabeth Francis, made to the appellees H. L. Lightsey and John R. Taylor, pursuant to an order of the County Court of Okmulgee County, Oklahoma, dated January 22, 1912, conveying the interests of the said minor heirs in and to

said allotment to the said appellees, and that the order of the said County Court of Okmulgee County, Oklahoma, confirming the sale thereof was effective to convey the said interests of the said minor heirs to the said appellees, Lightsey and Taylor.

IX.

The court erred in holding, deciding and decreeing that the Act of May 27, 1908, conferred power and jurisdiction upon the County Court of Okmulgee County, Oklahoma, as the court having jurisdiction of the persons and estates of said minor heirs, unrestricted power to order the sale and conveyance of the interests of the said minor heirs in and to the allotment, and that such deed was valid without the approval of the County Court of Wagoner County, in which said latter county Freeland Francis had his domicile at the date of his death.

X.

The court erred in not holding, deciding and decreeing that the said deed of the guardian of the said minor heirs, dated January 22, 1912, made pursuant to the orders of the County Court of Okmulgee County, Oklahoma, to the said appellees, Lightsey and Taylor, were void for want of approval by the County Court of Wagoner County, Oklahoma, the court having jurisdiction of the settlement of the estate of said deceased allottee, Freeland Francis.

XI.

The court erred in holding, deciding and decreeing that section 6 of the Act of Congress of May 27, 1908, governs the sale and conveyance of inherited lands of minor full-blood heirs of deceased members of the Five Civilized Tribes, and that the proviso of section 9 of said Act governs the sale and conveyance of inherited lands by full-blood adult heirs of deceased members of said tribes.

XII.

The court erred in holding, deciding and decreeing that section 9 of the said Act of Congress approved May 27, 1908, has no application to the sale and conveyance of inherited lands by full-blood minor heirs of deceased members of the Five Civilized Tribes.

XIII.

The court erred in holding that section 6 of the said Act of May 27, 1908, governs the sale and conveyance of inherited lands by minor full-blood heirs of deceased members of the Five Civilized Tribes, and not section 9 of said act.

XIV.

The court erred in holding, deciding and decreeing that the true interpretation of the Act of May 27, 1908, is that the conveyances of full-blood adult heirs are subject to the first proviso of section 9, but

that that proviso is inapplicable to guardian's conveyances of the interests of minor full-blood Indian heirs which have been regularly made pursuant to the orders of the County Courts of Oklahoma which had jurisdiction of the subject matter and the parties to the proceedings before them in which they were ordered, and that the guardian's deed of the interest of the minors, Amos Francis and Elizabeth Francis, was a valid conveyance without the approval of the County Court which might have had jurisdiction of the settlement of the estate of Freeland Francis whose heirs they are.

XV.

The court erred in holding, deciding and decreeing that the true construction of section 9 of the Act of May 27, 1908, is that it is prospective and not retrospective in effect, and that it applies to conveyances made after its passage, and is inapplicable to those made before its enactment.

BRIEF *and* ARGUMENT.

Upon the foregoing statement of facts, taken from the record, arise a number of questions upon which appellants ask a decision by this court. Appellants contend as follows:

I.

That the land, selected by the Commission to the Five Civilized Tribes for Freeland Francis after his death on December 4, 1907, passed to his mother, Annie, and his brothers and sister, Mack, Amos and Elizabeth, as original allottees, restricted as to alienation, and, therefore, that the deeds executed by Annie Harris, formerly Annie Francis, to Laura L. McGinnis, and the guardian's deed, executed by W. J. Cook, under the orders of the County Court of Okmulgee County, Oklahoma, to Lightsey and Taylor, were ineffective to convey title.

But, if the court should hold that appellants are in error as to the above and foregoing proposition, then appellants further contend:

II.

That said land passed to the said Annie, Mack, Amos and Elizabeth, as heirs of Freeland Francis, and that said deeds were ineffective to convey title because not approved by the court having jurisdic-

tion of the settlement of the estate of said Freeland Francis.

But, if the court should still hold that the two propositions above stated are insufficient for a reversal of the decree of the Eighth Circuit Court of Appeals, then appellants further contend:

III.

That the guardian's deed, executed by W. J. Cook under the orders of the County Court of Okmulgee County, Oklahoma, to Lightsey and Taylor, was ineffective to convey the title of Amos and Elizabeth, because the lands thereby attempted to be conveyed were restricted lands of living minors.

I.

Appellants Took as Allottees.

Some review of the several Acts of Congress relating to the allotment scheme devised for the distribution of Creek lands in severalty to the citizens of the tribe seems necessary to a clear understanding of the questions involved in these three propositions.

By section 28 of the Act of Congress approved March 1, 1901 (31 Stat. 861), commonly known as the Original Creek Agreement, it was provided, in part, that all citizens living on the first day of April,

1899, entitled to be enrolled under the Curtis Act, should be enrolled by the Commission to the Five Civilized Tribes, and that if any such citizen died after that date, or died at any date following the ratification of the agreement, without having received an allotment, then the distributive share of the tribal lands to which he would have been entitled, if living, should "*descend* to his heirs according to the laws of descent and distribution of the Creek Nation, and be *allotted* and distributed *to them* accordingly." Similar provision was also made for children born to such citizen up to and including July 1, 1900.

By section 7 of the same act, allotted lands were made inalienable by the *allottee, or his heirs,* at or before the expiration of five years from the ratification of the agreement, except with the approval of the Secretary of the Interior, and by section 3 of the same act, each allotment was to consist of 160 acres of land. The agreement was ratified by the Creek Council May 25, 1901.

By section 16 of the Act of Congress approved June 30, 1902 (32 Stat. 500), commonly known as the Supplemental Creek Agreement, allotted lands were likewise impressed with restriction upon their alienation by the *allottee, or his heirs,* except with the approval of the Secretary of the Interior, before the expiration of five years from the date of the approval of the act.

The same section further provided that the *homestead* of each citizen remained, after his death, for the use and support of children born to him after May 25, 1901, but that, in the absence of such children, he might dispose of his homestead by will, free from the limitation therein imposed; and, in the event of his failure to make testamentary disposition of it, the lands embraced in his homestead should descend to his heirs, free from said limitation, according to the laws of descent in said act prescribed, which laws, as provided by another section, were embodied in chapter 49 of Mansfield's Digest of the Statutes of Arkansas, then in force in Indian Territory. It will be observed that no provision is here made for the descent and distribution of the remaining 120 acres, comprising the allotment, and commonly known as the surplus land.

By section 7 of the last named act, provision is likewise made for the enrollment of all children of citizens entitled to enrollment under the Original Creek Agreement, born subsequent to July 1, 1900, and up to and including May 25, 1901, and for the descent and distribution of lands allotted to those who had died after May 25, 1901, or who might thereafter die, before receiving an allotment.

Thus far no provision had been made for enrollment and allotment of Creek citizens born subsequent to May 25, 1901, and, had the law so remained,

Freeland Francis, having been born the 30th day of April, 1903, would have been debarred both from enrollment and allotment. By the Indian Appropriation Act approved March 3, 1905 (33 Stat. 1048), however, provision was made for the enrollment and allotment of children born subsequent to May 25, 1901, and prior to March 4, 1905, and living on the latter date. The exact language of this provision was as follows:

> "That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this act to receive and consider applications for enrollment of children born subsequent to May twenty-five, nineteen hundred and one, and prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Creek Tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act; and to enroll and make allotments to such children."

It was by virtue of the above paragraph, quoted from the Indian Appropriation Act in question, that Freeland Francis became entitled to enrollment and allotment, and by virtue of which he was enrolled and allotted. He was born on the 30th day of April, 1903, the application for his enrollment was received on the 26th day of April, 1905, he was enrolled on the 10th day of June, 1905, his enrollment was approved by the Commissioner to the Five Civilized

Tribes on the 26th day of September, 1906, and by the Secretary of the Interior on the 15th day of October, 1906, and his death occurred on the 22nd day of June, 1905. The selection of his allotment was made by the Commission on the 4th day of December, 1907 (Census Card, Tr. Rec., insert between pp. 159A-159B). He was what is known and termed in the phraseology of the Interior Department, and of people in Eastern Oklahoma, as a New Born, as were the children for whom provision had been made both by the Original and Supplemental Creek Agreements. That term will hereafter be used to designate such children.

It will be noted that the paragraph above quoted from the Act of 1905, provides only for the enrollment and allotment of the new borns therein mentioned. It nowhere provides for the descent and distribution of lands allotted before death, nor lands allotted after death, nor does it provide for the quantity of lands to be allotted to each new born, nor for a division of the allotment into homestead and surplus lands. All reference to restriction upon the alienation of such allotments, either before or after death, is likewise omitted. If, therefore, effect is to be given to this provision resort must be had to the Original and Supplemental Agreements wherein similar provisions are made as to new borns, and, in view of their importance, it may be as well to set them out here in full.

In section 28 of the Original Creek Agreement provision is made as follows:

> "All children born to citizens so entitled to enrollment, up to and including the first day of July, nineteen hundred, and then living, shall be placed on the rolls made by said commission; and, if any such die after said date, the lands and moneys to which it would be entitled, if living shall descend to its heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly."

In the Supplemental Creek Agreement, section 7 provides:

> "All children born to those citizens who are entitled to enrollment as provided by the Act of Congress approved March 1, 1901 (31 Stat. L. 861), subsequent to July 1, 1900, and up to and including May 25, 1901, and living upon the latter date, shall be placed on the rolls made by said commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly."

The Act of March 3, 1905, must be regarded as amendatory of section 7 of the Supplemental Agreement, above quoted, and as extending the provisions of that section to all children to whom the Act of

March 3, 1905, is applicable. Section 7 is in turn governed and controlled by section 16 of the Supplemental Agreement, which provides restriction upon alienation.

By reference to section 16, it will be observed that allotted lands may not be sold by the allottee, or his heirs, before the expiration of five years from the date of the approval of the Supplemental Agreement, except with the approval of the Secretary of the Interior, and that the homestead, consisting of 40 acres, shall remain inalienable for a period of 21 years from the date of the deed therefor. Upon the death of the allottee, however, the homestead shall remain for the use and support of the children born to him after May 25th, 1901, but dying without such children, he possesses the right to dispose of his homestead by will, and, if he fails to make that disposition of it, it descends to his heirs free from its limitation for the use and support of such children, imposed by that section.

We are not unaware of the decision by this court in *United States* v. *Cook,* 225 Fed. 756, followed by a decision by the Supreme Court of the State of Oklahoma in *Oates* v. *Freeman,* 157 Pac. 74, wherein it is held that the words "free from the limitation herein imposed," and, "free from such limitation," were intended by Congress to refer to the five- and twenty-one year restrictions theretofore mentioned

in section 16, and that the word "limitation," and the word, "restriction," might be used interchangeably, but after further consideration and the hearing of further argument, we hope the court will revise its views in those respects, so expressed in the *Cook* case. Entertaining always the utmost respect and deference to the opinion of this court it seems to us that the word "limitation" as used in section 16, refers to the reservation of the homestead for the use and support of children born to the allottee after May 25, 1901, and not to those clauses of the section providing for restriction upon alienation.

In view of the bearing of section 16 on the instant case, it may be advisable to quote it in full:

> "Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. Each citizen shall select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which shall be and remain non-taxable, inalienable, and free from any incumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which this condition shall appear.

"Selection of homesteads for minors, prisoners, convicts, incompetents and aged and infirm persons, who can not select for themselves, may be made in the manner provided for the selection of their allotments, and if for any reason such selection be not made for any citizen it shall be the duty of said Commission to make selection for him. The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue then he may dispose of his homestead by will, free from the limitation herein imposed, and if this be not done the land embraced in his homestead shall descend to his heirs free from such limitation, according to the laws of descent herein otherwise prescribed. Any agreement or conveyance of any kind or character violative of any of the provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity."

We can conceive of no reason why the homestead should descend to the heirs free from restriction and yet the surplus should be permitted to descend with restrictions attached. We can conceive of a reason why the homestead should be restricted for a period of 21 years and yet the surplus be restricted for a period of 5 years only. We can conceive of a reason why the homestead should be reserved for the use and support of children born to the allottee after

May 25, 1901, and we can conceive of a reason why, in the absence of such children, the homestead might be made a subject for devise, or that it might be made a subject for descent and distribution to the heirs free from the limitation of its use and support of certain children of the allottee, but we can conceive of no reason why it should be exempt from alienation upon the death of the allottee and the surplus yet remain impressed with restriction upon alienation. The language of the last part of paragraph 2 of section 16 is not altogether free from confusion and ambiguity, and yet it would seem that the word "limitation," as therein used, could refer only to the words, "for the use and support of children born to him after May twenty-five, nineteen hundred and one."

Whatever may be the fact, however, as to the true and proper construction of section 16 respecting the alienability of homesteads, there can be no such question respecting the restriction upon alienation of the surplus. In our view, the restriction upon alienation is, by the statute, extended to both tracts, and the argument will proceed upon that theory, with no distinction in that respect between the two tracts. As hereinbefore stated, the Supplemental Agreement, of which said section 16 was a part, was approved June 30, 1902, and the homestead deed executed to Freeland Francis was dated December 10,

1908, the selection having been made by the Commission on December 4, 1907.

By section 19 of the Act of Congress approved April 26, 1906 (34 Stat. 137), it was provided, in part, as follows:

> "That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by Act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior."

This section extended the period of time within which restriction on the alienation of lands allotted under the Original and Supplemental Agreements should be and remain in force, and the constitutionality and the validity of the act has been upheld by the Supreme Court of the United States in *Tiger* v. *Western Investment Company,* 221 U. S. 286.

We have now a situation different from that presented by the Original and Supplemental Agreements. By those agreements restriction upon alienation was limited to five years upon the surplus, and

twenty-one years upon the homestead, and this, too, without reference to the degree of blood of the allottee. The section quoted is confined to restriction upon the alienation of lands allotted to full-bloods, and the period of time is fixed at twenty-five years from and after April 26, 1906. The roll approved by the Secretary of the Interior determines the quantum of Indian blood of the allottee and the courts have held that roll to be conclusive evidence in that respect.

Section 5 of the last named act reads as follows:

"That all patents or deeds to allottees in any of the Five Civilized Tribes to be hereafter issued shall issue in the name of the allottee, and if any such allottee shall die before such patent or deed becomes effective, the title to the lands described herein shall inure to and vest in his heirs, and in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life, and all patents heretofore issued, where the allottee died before the same became effective, shall be given like effect; and all patents or deeds to allottees and other conveyances affecting lands of any said tribes shall be recorded in the office o the Commissioner to the Five Civilized Tribes, and when so recorded shall convey legal title, and shall be delivered under the direction of the Secretary of the Interior to the party entitled to receive

the same: *Provided,* The provisions of this section shall not affect any rights involved in contests pending before the Commissioner to the Five Civilized Tribes or the Department of the Interior at the date of the approval of this act."

We have purposely transposed the order in which the last two paragraphs occur in the Act of April 26, 1906, for the reason that, as so transposed, the order seems to us the more natural in point of sequence, and, in any event, it suits better the argument which we propose to advance.

Section 5 is partly prospective in its effect, and partly curative. It is prospective in that it requires all patents or deeds thereafter issued to be issued in the name of the allottee, and, in the event of the death of the allottee, the title thereby conveyed shall vest in his heirs. It is likewise prospective in that it provides that in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs, or his lawful assigns, as if the patent or deed had been issued to the allottee during his life. It is curative in that it provides that all patents theretofore issued, where the allottee died before the patent became effective, should be given this same effect.

Section 19 seems to contemplate that lands allotted to full-bloods shall be inalienable for 25 years

after the approval of the act, unless the restriction upon alienation be removed "by Act of Congress." Literally interpreted this would seem to require the introduction of a bill in Congress having for its purpose the removal of restrictions in a given case, or removal of restrictions generally, and its enactment into law, in the manner prescribed for the passage of Congressional Statutes, in order to effect removal of restrictions from a given piece of property, or property of the Five Civilized Tribes generally. This is not the construction, however, that has been placed upon it by the Department. The Department has recourse, for its authority to remove restrictions, to the Indian Appropriation Act approved April 21, 1904 (33 Stat. 189), providing that restrictions may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe, upon application to the United States Indian Agent, at the Indian Agency, in charge of the Five Civilized Tribes, if said agent is satisfied upon investigation of each individual case that such removal of restrictions is for the best interest of the allottee, and providing further that the findings of the United States Indian Agent, and of the Secretary of the Interior, shall be in writing and shall be recorded in the same manner as patents for land are recorded.

Certain it is, that no measure designed to remove restrictions from the land of Freeland Francis ever passed the Congress of the United States, and no steps were ever taken for the removal of those restrictions, such as are contemplated by the Indian Appropriation Act, approved March 4, 1904. No pretense was made upon the trial of the case that either of these things had been done. It was shown, in the course of the trial, that the Secretary of the Interior had, on the 6th day of July, 1910, approved the deed executed by Annie Francis as an heir to the estate of Freeland Francis, but this did not operate as a removal of restrictions, either under the Act of 1904 or the Act of 1906. Apparently it was an attempt on the part of the Secretary to approve a conveyance of inherited lands under the provisions of section 22 of the Act of 1906, but, even assuming that the lands were inherited, the attempt of the Secretary was ineffective for that purpose as we shall later show. In no view of the matter could his approval of the deed be construed to be a removal of restrictions from the land.

Under the several Acts of Congress mentioned, there came into existence, following the Act of 1906, a revised and modified scheme for the allotment and distribution of lands in the Creek Nation, differing radically in some respects from the original scheme. Freeland Francis was enrolled and allotted under

this revised and modified scheme. It was the Act of 1905 which gave him the right to enrollment and allotment, and the allotment was made subject to the modifications of the original scheme, as contained in the Act of 1906, for the reason that his selection was made on the 4th day of December, 1907, and the patents were issued on the 10th day of December, 1908. Thus both the legal and equitable title passed from the Creek Nation under the Act of 1906 and all prior acts affecting it.

We are not unmindful of the cases of *Mullen* v. *United States*, 224 U. S. 448, and *Skelton* v. *Dill*, 235 U. S. 206, decided by the Supreme Court of the United States, and yet we believe, in the instance of the present case, the title to the property in controversy passed to takers, under the patent from the Creek Nation, as original allottees subject to restriction upon alienation, as provided by section 19 of the Act of Congress of April 26, 1906. If we are right in this contention no title has ever passed from appellants, Annie Harris and Amos and Elizabeth Francis, because they are Indians of the full-blood.

In the various Acts of Congress providing for the distribution of lands allotted after death, there occurs invariably the words, "the lands and moneys to which he would have been entitled if living, shall *descend* to his heirs * * * and be *allotted* and *distributed* to them accordingly." This is true of section

28 of the Original Agreement, both as to those citizens living on the 1st day of April, 1899, and the new borns mentioned in the same section, and is also true of the new borns mentioned in section 7 of the Supplemental Agreement. The Act of 1905 makes no provision for the disposition of allotments selected after death, but if we are right in our conclusion hereinbefore expressed, then the same words may be read into that act; otherwise, the court must find that the title is still in the Creek Nation.

We respectfully suggest that the word "descend" as used in these several acts is controlled and governed by the words "allotted" and "distributed." The word "descend" is used, in our judgment, to determine the proportionate interests in the title to the allotment which shall vest in the heirs. The law prevailing in the Creek Nation at the time was the law designated to determine those proportionate parts, in the Original Agreement, and the law embraced in chapter 49 of Mansfield's Digest of the Statutes of Arkansas, was named for the same purpose in the Supplemental Agreement. The words "allotted" and "distributed" indicate an intention upon the part of Congress to pass the title directly to the heirs as original allottees, to be subject to all the provisions of the act, including those relating to restrictions.

The use of the word "allotted," as contained in section 11 of the Curtis Act, is descriptive of conveyances of surface lands made direct to citizens as provided by that measure. Section 3 of the Original Agreement provides that there shall be "allotted" to each citizen 160 acres of land. So, when Congress said that the lands of a citizen, dying without having received an allotment, should be allotted and distributed to the heirs, it meant that the heirs should take as allottees, otherwise the words "allotted" and "distributed" would be meaningless as used in the several acts mentioned, and it is a rule of law that all words of a statute must be taken into consideration when an interpretation is sought to be placed on it. If these several acts meant that the parties designated as heirs were heirs in the sense that they inherit land from a deceased ancestor, then the words "and be allotted and distributed to them accordingly" would be utterly superfluous, because provision had already been made by the words immediately preceding, that the lands should "descend to his heirs," according to certain laws named. We conclude, therefore, that, when Freeland Francis died, he was not seized with an estate of inheritance in the lands subsequently allotted in his name.

Whatever may be the truth of our theory as to the meaning of the words "allotted" and "distributed" as used in the Original and Supplemental

Agreements, there is ample justification for the theory that under the provisions of the Act of April 26, 1906, appellants took title to the land allotted in the name of Freeland Francis as original allottees, and not as heirs who take by inheritance.

In *Tiger* v. *Western Investment Company, supra,* the court, having under consideration sections 19, 20, 22 and 23, took occasion to say: "The sections of the Act of April 26, 1906, under consideration, show a comprehensive system of protection as to such Indians. Under section 19 they are not permitted to alienate, sell, dispose of, or encumber allotted lands within twenty-five years unless Congress otherwise provides."

In the very recent case of *Bruner* v. *Nordmeyer et al.,* 166 Pac. 126, decided by the Supreme Court of the State of Oklahoma, that court said:

> "There may be an additional reason for holding the deed in the instant case void in this: The allotment was made in October, 1906, after the Act of Congress of April 26, 1906, went into effect. The title passed to the heirs at the date of the allotment under the law in force at that time. The law at the date of the allotment, and not at the death of the allottee, controls as to when the title vests in the heirs."

In support of this suggestion the court cited the cases of *Brady* v. *Sizemore,* 33 Okla. 169. 235 U. S. 441;

Woodward v. *deGraffenreid,* 238 U. S. 284, and *McKee* v. *Henry,* 201 Fed. 74.

The Supreme Court of the State of Oklahoma does not dilate upon this suggested view contained in the *Nordmeyer* case, but undoubtedly it had under consideration at the time particularly sections 5 and 19 of the Act of 1906, evidently regarding them as a new scheme for the allotment and distribution of the lands of the Creek Nation, supplemental and amendatory of the Original and Supplemental Agreements.

This brings us to a consideration of section 5 of the Act of 1906. By that section it is provided, in part, as follows:

> "That all patents or deeds to allottees in any of the Five Civilized Tribes to be hereafter issued shall issue in the name of the allottee, and if any allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs, and in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life."

When this section took effect, Freeland Francis was dead, but it was in full force and effect on the date when the Commission made his selection and issued his certificate, as well as on the date when the pat-

ents were issued in his name. It will thus be seen that both the legal and equitable title had passed and been impressed with the provisions of this section, as well as section 19 of the same act.

By the provision of section 5, it was not only the purpose of Congress to prescribe a uniform form for deeds to the allottees, but it was also the purpose of Congress to provide that the title to the land should pass direct from the Creek Nation to the heirs of the person in whose citizenship the right to the allotment had its origin, as allottees or immediate grantees of the Creek Nation; otherwise it would have been unnecessary to add that "the title to the lands described therein shall inure to and vest in his heirs," or to say that in the event of the death of the allottee after removal of restrictions, "his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life." So, not only was the form of the deed prescribed by section 5, but the persons in whom the title should vest upon issuance of deed, were likewise determined.

Certainly in the instant case this must be true, because of the date when the equitable title passed. The selection by the Commission was made for Freeland Francis on the 4th day of December, 1907. Up to that date the land so selected had been a part of the unallotted domain of the Creek Nation. The

title was held in trust for the Creek Nation by the Government of the United States, and the Government had not then surrendered that trust. Congress might dispose of the title as it saw fit and, for that purpose, might have enacted any laws, within its constitutional rights, prescribing the method, the time, the quantity and the conditions under which it would part with that title. Congress might have chosen to sell at public auction to the highest bidder, or might have chosen to donate it to an eleemosynary institution, but it did in fact, choose to allot it in the name of Freeland Francis, impressed with all conditions named in the Act of 1906 and of all previous acts of which that act was amendatory.

Among those conditions was the inurement and vestment of the title, allotted and patented in the name of Freeland Francis, in his heirs, and a restriction upon its alienation in their hands, for a period of twenty-five years from and after the passage and approval of the act, as provided by section 19.

We are further supported in our view that the land passed to those persons denominated heirs directly, and as original allottees, by that clause in section 5 which says that "in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee dur-

ing his life." This provision presupposes an allottee, a person to whom a certificate of selection conveying the equitable title had issued, but to whom no patent or deed had issued. To such a person there was the capability of heirs because he possessed an estate of inheritance, the equitable title having passed by reason of the issuance of a certificate; in the case under consideration there could be no heirs because no title to the land, either equitable or legal, had ever vested in the enrolled citizen, Freeland Francis, and, therefore, Congress designated those persons who might have been his heirs, had he died possessed of an estate of inheritance, as the persons to whom the title should go direct upon the issuance of certificates and the execution and recordation of the patents. Hence they, and not Freeland Francis, were not only the first takers but were the original allottees, and took the land encumbered with all the conditions that had been prescribed by Congress in relation thereto, particularly that condition which forbade them to alienate, sell, dispose of or encumber it in any manner within the prescribed period of twenty-five years.

II.

If Appellants Did Not Take as Original Allottees, They Did Take as Heirs of the Full Blood.

In *Brader* v. *James,* 246 U. S. 88, and *Talley* v. *Burgess,* 246 U. S. 104, it was assumed by court and counsel that the parties there, situated similarly as are the appellants in this action, took as heirs, and that, under section 22 of the Act of April 26, 1906, the lands were inherited, and restricted as to alienation, and subject to that provision which required conveyances by them to be approved by the Secretary of the Interior. The question as to whether or not they took it as allottees was not raised or discussed in either case. Under the authority of those two cases we will, therefore, proceed to treat them as heirs under the second proposition herein advanced.

The deed executed by Annie Harris, formerly Annie Francis, was dated January 15, 1908, and was filed in the office of the United States Indian Agent December 31, 1909, accompanied by an application for its approval by the Secretary of the Interior, and was approved by the Secretary on July 6, 1910. The deed of W. J. Cook, as guardian of Amos and Elizabeth Francis, executed under orders of the County Court of Okmulgee County, Oklahoma, was dated January 15, 1912, and was subsequently filed in the

office of the United States Indian Agency, together with an application for its approval by the Secretary of the Interior, on October 8, 1912. We contend that, if appellants are to be regarded as heirs, the restrictive provision contained in section 9 of the Act of May 27, 1908, governed both deeds, and that they were ineffective to convey title without the approval of the court having jurisdiction of the settlement of the estate of Freeland Francis, the deceased allottee, to whose rights in the land appellants succeeded.

The deed executed by Annie Francis, who was an adult full-blood Indian, was approved by the Secretary of the Interior, but that approval, having been made by the Secretary on the 6th day of July, 1910, was, in our judgment, insufficient to validate the deed, because the Act of May 27, 1908, intervened between the date of the deed and the date of its approval by the Secretary of the Interior, and that act superseded and repealed in some part the Act of April 26, 1906. The restriction upon alienation of land held by full-blood Indian heirs was retained. The death of any allottee was made to operate as a removal of all restrictions upon alienation, but, by section 9 of the act, the conveyance of any interest of any full-blood Indian heir was made ineffective to convey title unless approved by the court having jurisdiction of the settlement of the estate of the deceased allottee.

It was urged in the Circuit Court of Appeals, and is urged here, that the Act of May 27, 1908, insofar as it related to the approval of deeds executed by full-blood Indian heirs, repealed section 22 of the Act of April 26, 1906, which provided the approval of such deeds by the Secretary of the Interior. The Court of Appeals held section 9 of the Act of May 27, 1908, prospective in its force, and not at such variance with section 22 of the Act of April 26, 1906, as, impliedly, to repeal the latter section. From these views of the Circuit Court of Appeals we must dissent.

Section 22 of the Act of April 26, 1906, reads as follows:

> "That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States Court for the Indian Territory. And in case of the organization of a state or territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by

> heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe."

And section 9 of the Act of May 27, 1908, reads in part as follows:

> "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee. * * * "

When placed in juxtaposition it will be seen that the two sections can not stand together. If section 22 stands in part it must stand in its entirety, and, therefore, both deeds in this instance must fall because the procedure provided by that section, for the sale of inherited lands, was in no respect followed. Annie executed her own deed, and the deed of Amos and Elizabeth was executed under court orders. Annie did not join in the execution of the deed by the minors, nor did the minors join in the execution of the deed by Annie, yet, the statute provides that "if there be both adult and minor heirs, the minor heirs may join in a sale of the land, by a guardian duly appointed by the proper United States Court for the Indian Territory, or, in the event of

the organization of a state or territory, then by the proper court of the county in which such minor or minors may reside, or in which such real estate is situated, under order of such court made upon petition filed by the guardian." The title acquired by the defendants Lightsey and Taylor was not acquired by a deed executed in that manner. Annie made her separate deed January 15, 1908, and the guardian made his separate deed January 15, 1912, four years later. There was, therefore, no pretense of a compliance with the terms of section 22, which provides for a procedure by which the sale of the lands of Freeland Francis might be had. The deed of Annie Francis was approved by the Secretary of the Interior on July 6, 1910, but this was long subsequent to the date when section 9 of the Act of May 27, 1908, became effective.

The Act of May 27, 1908, was unquestionably intended as a substitute for all prior laws upon all matters embraced in it. One of the things embraced in it was the manner by which the inherited land of a full-blood Indian heir might lawfully be conveyed, as exhibited in section 9. This section provides that the sale of such lands, to be valid, must be approved by the court having jurisdiction of the settlement of the estate of the deceased ancestor, while section 22 provides that such approval must be had by the Secretary of the Interior. If section 9 operated to re-

peal section 22, then the Secretary of the Interior was shorn of his power to approve conveyances of full-blood Indian heirs, and that power rested alone in the probate courts of Oklahoma. It is our opinion that such a repeal was impliedly effected. When a revising statute covers the whole subject-matter of antecedent statutes the revising statute virtually repeals the antecedent statutes, unless there is something in the nature of the subject-matter of the revising statute to indicate a contrary intention.

—*Kohlstaat* v. *Murphy*, 96 U. S. 153;
Daviess v. *Fairbairn*, 3rd How. 636.

The language of section 9 would seem to support this view. It will be noted that the proviso is expressed in the future tense. This seems to mean that while the Secretary of the Interior had theretofore had the power to approve full-blood deeds to inherited lands, yet, from and after the date of May 27, 1908, that power became vested in the Oklahoma probate courts, both as to deeds theretofore and deeds thereafterwards executed. The Eighth Circuit Court of Appeals cites *Pickering* v. *Lomax*, 145 U. S. 310-315, and other decisions in support of the proposition that section 9 was prospective and not retrospective. An examination of these decisions will disclose that no Acts of Congress intervened between the dates when the officers therein designated to approve deeds

were named and the dates of the deeds that were approved. It is respectfully submitted that those decisions have no application whatever to the case at bar. In this case the Secretary would have had authority to approve the deed of Annie and the deed of Amos and Elizabeth, through their guardian, had not the Act of May 27, 1908, intervened, by which that authority was transferred from him to the probate courts of the State of Oklahoma. If this be true, it follows that Annie's deed was void, because, while approved by the Secretary of the Interior on July 6, 1910, it has never had the approval of the probate court having jurisdiction of the settlement of the estate of Freeland Francis.

The record clearly discloses that the deed executed by the guardian, conveying the interests of Amos and Elizabeth, was without the approval either of the Secretary of the Interior or any probate court of the State of Oklahoma, yet, before that deed could be valid it would seem that, under section 9 of the Act of 1908, the approval of some probate court of the State of Oklahoma was necessary.

It is true that there was an order confirming the sale of the land, made by the County Court of Okmulgee County, in which the guardianship proceedings of Amos and Elizabeth were pending, but this is in no sense equivalent to an approval of the deed by the court having jurisdiction of the settlement of

the estate of the deceased Indian. There was no proof whatever that the deceased, Freeland Francis, either lived or died in Okmulgee County, or that proceedings for the settlement of his estate were pending in Okmulgee County at the time the deed was executed, or that the proceedings of that kind had never been instituted in that county. The proof did show that, at the date of his death, Freeland Francis was a resident and domiciled in that part of the Creek Nation now constituting Wagoner County. It would seem, therefore, that the County Court of Wagoner County was the proper authority, and the only authority, with power to approve the deed. But if the County Court of Wagoner County was without authority to approve the deed because the administration proceedings had not been removed to that county, as suggested by the Circuit Court of Appeals, then the County Court of Muskogee County was the proper authority for the approval of both deeds. In the agreed statement of facts it is recited that an administrator for the estate of Freeland Francis was appointed by the United States Court for the Western District of Indian Territory, sitting at Muskogee, on March 25, 1907, and in the course of the trial it was developed that those proceedings, so instituted in that court, were subsequently transferred, upon the advent of statehood, November 16, 1907, to the County Court of Muskogee County, and that said

proceedings were pending in the County Court of Muskogee County on the date when the guardian's deed was executed. Nowhere does the record disclose, nor is it a fact, that the approval of the County Court of Muskogee County, then holding, rightfully or wrongfully, jurisdiction of the settlement of the estate of Freeland Francis, was obtained for either deed, or even sought to be obtained.

It seems that defendant Bell took the precaution to have the deed, executed to him by Annie Francis, to be approved by that court, as shown by the order of court, set out at pages 159M and 159N of the record. This precaution the guardian of Amos and Elizabeth did not take. It is, therefore, the contention of appellants that both deeds, that of Annie and that by the guardian of Amos and Elizabeth, should have been approved by the County Court of Muskogee County which, in fact, took jurisdiction of and administered the estate of Freeland Francis, or that they should have been approved by the County Court of Wagoner County, which was entitled to take charge of and administer the estate of Freeland Francis because Freeland Francis was a resident of, and domiciled in, that county at the date of his death, and this is in accordance with section 9 of the Act of May 27, 1908.

But it was the view of the Circuit Court of Appeals, as shown by their opinion, that the "true in-

terpretation of the Act of May 27, 1908, is that conveyances of *adult* full-blood Indian heirs are subject to the first proviso of section 9, but that that proviso is inapplicable to guardians' conveyances of the interests of *minor* full-blood Indian heirs which have been regularly made pursuant to the orders of the County Court of Oklahoma which had jurisdiction of the subject matter and the parties to the proceedings before them in which they were ordered, and that the guardian's deed of the interests of the minors, Amos Francis and Elizabeth Francis, was a valid conveyance without the approval of the County Court which might have had jurisdiction of the settlement of the estate of Freeland Francis, whose heirs they are." To this view of the Circuit Court of Appeals we can in no wise assent. In our judgment, it amounts to a nullification of section 9 insofar as that section applies to full-blood minor heirs. If Congress had intended that minor heirs should be excepted from the provisions of section 9, undoubtedly such an exception would have been made. The language of the section is, "*any* full-blood Indian heir," and this includes minors as well as adults. It would have been a matter requiring neither thought nor work upon the part of Congress to except minors from the operation of the section had there been any purpose or intention to do so. The words "except minors" inserted in the section fol-

lowing the word "heir" would have accomplished that purpose, and yet, the section contains no such exception. The decision of the Circuit Court of Appeals virtually writes such an exception into the section, or, to put it somewhat differently, destroys the section insofar as minors are concerned. It will not do to say that the confirmation of a guardian's deed, made pursuant to the general statutes of the State of Oklahoma, by a County Court having jurisdiction of a guardianship proceeding, is a compliance with the Act of Congress requiring the deed of a full-blood Indian heir to be approved by the court having jurisdiction of the settlement of the estate of the deceased allottee. The Statutes of the State of Oklahoma provide for the sales of the lands of minors for certain stated reasons which are jurisdictional, and these statutes are applicable to all minors alike, save in the instance of members of the Five Civilized Tribes, with reference to whom Congress is empowered to make exceptions, and has, in fact, made certain exceptions. A confirmation pursuant to these general statutes is not an approval within the meaning of section 9. Under the general statutes a confirmation is had in the course of guardianship proceedings, while under section 9 an approval must be had by a court in charge of the administration of the estate of a deceased person.

When Congress provided, by section 9 of the Act of May 27, 1908, "that no conveyance of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of the deceased allottee" it used plain, ordinary language, the meaning of which was, and is, unmistakable. The provision extends to "*any*" full-blood Indian heir, and yet, the Court of Appeals in its opinion limits it to adults and excludes minors from its operation. The reasoning of that court is, that *section 6* of the Act of 1908 provides for minor allottees and their property, in that it declares that the persons and property of minor allottees of the Five Civilized Tribes shall be subject to the jurisdiction of the probate courts of the State of Oklahoma, but the opinion admits that the proviso of section 9, by its terms, treats of all full-blood Indian heirs of allottees of the Five Civilized Tribes, including both adults and minors. It then proceeds to except from the operation of section 9 deeds of guardians of minors, because that section does not specifically enact that such deeds shall be invalid unless approved by the courts having jurisdiction of the settlement of the estate of the respective deceased allottees. In other words, although the opinion admits that section 9 treats of all full-blood Indian heirs, adults and minors, yet, because Congress failed to incorporate in the section a proviso

that its terms should not extend to guardians' deeds, the section was not intended to apply to deeds of that nature. A minor can execute a deed in no other way than through a guardian, under court orders, and if the proviso contained in section 9 extends to the minors, then it must necessarily extend to deeds of minors executed through guardians. But, can an exception as to guardians' deeds be interpolated and read into section 9 by the courts upon the ground and for the reason that in the enactment of section 6 it is improbable that there came to the minds of the legislators the question of the approval of conveyances made under that section? We think not, and yet, such interpolation and exception must be read into section 9 to justify the reasoning of the Court of Appeals. The language of section 9 is plain and unambiguous, and, under the authority of *Campbell* v. *Wadsworth*, 39 Sup. Ct. Rep. 63, we contend that the Circuit Court of Appeals was in error in that respect. In that case this court said:

> "All statutes of descent and distribution are arbitrary expressions of the purpose of the law-making power, and that the provisions of such a statute do not happen to meet the notions of justice of a court is not sufficient reason for indulging in an interpretation which modifies their plain and unambiguous terms. Especially is this true of these Indian statutes, which are a progressive development, embodying concessions to tribal custom and tradition, necessary

to be made in order to accomplish a practical, though perhaps not an ideal, dissolution of the tribal relation, and distribution of the tribal property."

It is true, as stated by the Circuit Court of Appeals in its opinion, that section 6 of the Act of 1908 provides for minor allottees and their property, and declares that the persons and property of minor allottees of the Five Civilized Tribes shall be subject to the jurisdiction of the probate courts of the State of Oklahoma. It is respectfully submitted that section 6 of the Act of 1908 does more than is here suggested. It empowers the Secretary of the Interior, under rules and regulations to be prescribed by him, to appoint local representatives within the State of Oklahoma with certain defined powers and duties to be exercised in the interest of the estates of all minors of the Five Civilized Tribes, and all members of those tribes, both adult and minor, having restricted lands. It provides an appropriation of funds for salaries and expenses arising under the section, and the payment of necessary expenses incident to any suits brought at the instance of the Secretary in the Eastern Judicial District of the State of Oklahoma. But section 6 does *not* unqualifiedly commit the persons and property of minor allottees of the Five Civilized Tribes to the jurisdiction of the probate courts of the State of Oklahoma. The probate courts are

given jurisdiction by that section over the persons and property of minor allottees of the Five Civilized Tribes, with a very marked qualification, and that is, "*except as otherwise specifically provided by law.*" The law to which reference is made in the qualification, or exception noted, means *federal law,* and not state law. It was so held by this court in the case of *Truskett* v. *Closser,* 236 U. S. 233. It was further held in the same case that the general statutes of the State of Oklahoma did not preclude the exercise of the power of Congress, as exhibited in the Act of May 27, 1908, and in support of that view the court cited *Marchie Tiger* v. *Western Investment Company,* 221 U. S. 286, and said that the courts, both state and federal, have found no difficulty in determining its meaning, or its dominance over the provisions of the state law. This case announces a doctrine completely antagonistic to the views expressed in the case at bar by the Circuit Court of Appeals. The Court of Appeals seems to indicate that a confirmation of a sale of the lands of a full-blood minor Indian heir under the general statutes of the State of Oklahoma sufficiently complies with the demands and requirements of the law for the protection of the rights of such minor. Perhaps those rights are sufficiently protected in that way by the general statutes of the state, but, evidently, Congress did not think so, because it made an exception, and a distinct and

emphatic exception, to the general statutes of the state in the respect that it required not only a compliance of those statutes as regards sales of minors' lands, but the additional requirement and safeguard that full-blood Indian minor heirs should further be protected by the approval of their deeds, by guardians, by the court having jurisdiction of the settlement of the estate of deceased allottees, as provided by section 9 of the Act of 1908. Nor was the exception noted the only exception made by Congress in the Act of May 27, 1908. There are a number of these exceptions, and we shall presently have occasion to note another, equally as marked and equally as distinct, as that to which reference is now made.

The jurisdiction conferred upon the probate courts of Oklahoma by the Act of May 27, 1908, was a limited jurisdiction. In a general way those courts are given jurisdiction over the persons of minors and their properties which are restricted. They may appoint guardians and require the guardians to perform the functions vested in and imposed upon them by the general statutes of the state. They may exercise a general supervising control over minors and their guardians, such as the law generally contemplates, but they are as much bound by the Acts of Congress affecting minors and their estates as they are by the common law. In fact, except for the Act of May 27, 1908, the probate courts of the State of

Oklahoma would have no jurisdiction whatever over the persons and estates of the minors of the Five Civilized Tribes. It was that act that gave them whatever power they have over minors and their estates. Congress could have committed jurisdiction over minors and their estates to the District Courts of Oklahoma, or any of the other tribunals of that state, but it saw fit, in the exercise of its power, to commit both to the probate courts, and the probate courts derived what power they have in that way, and no other. In the exercise of that power the probate courts of Oklahoma must not ignore and overlook the provisions of the very Act of Congress which conferred it upon them. Over the lands of the minor heirs of the Five Civilized Tribes whose lands are unrestricted the general statutes of the state would seem to apply with all of their force, and the powers of the probate courts would seem to extend over them, as over other citizens of Oklahoma, and this is because of the power confided in the probate courts by the Act of May 27, 1908. But the inherited lands of minor full-blood Indian heirs are restricted, and the probate courts of Oklahoma, in dealing with those lands, must take into consideration and give effect to the Acts of Congress respecting them as restricted lands because these acts take precedence over the general laws of the state relating to the administra-

tion and conveyance of the lands of full-blood minor heirs generally.

Before concluding a discussion of the proposition that the deed of Annie Harris, and that of Amos and Elizabeth, by their guardian, were void, because lacking the approval of the court having jurisdiction of the settlement of the estate of Freeland Francis, we desire to quote from the case of the *Okla Oil Company* v. *Bartlett*, 236 Fed. 488, as follows:

> "The purpose of said Act of Congress was to permit lands to be conveyed by full-blood Indian heirs of deceased allottees with the specific restriction that such conveyances were invalid, unless approved by the County Court therein named, and was intended to prevent imprudent sales by this class of Indians. *Marchie Tiger* v. *Western Investment Co.*, 221 U. S. 286, 31 Sup. Ct. 578, 55 L. ed. 738. That part of section 9 of the Act of Congress of May 27, 1908, c. 199, 35 Stat. 312, which provides 'that no conveyance of any interest of any full-blood Indian heir in such lands shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee,' does not require of said court the performance of any judicial function. *Tiger* v. *Creek County Court*, 45 Okla. 701, 146 Pac. 912; *Jennings* v. *Wood et al.*, 192 Fed. 507, 112 C. C. A. 657. We therefore conclude that the deed by Jack Gouge to defendant's grantors, approved by the County Court of Hughes County, Oklahoma, which court, it is conceded, did not have jurisdiction of the

settlement of the estate of Chunna Gouge, deceased, was invalid, and defendant has and can claim no interest in or to the premises in controversy by virtue thereof."

And likewise from the decision by this court in the case of *Parker, Supt., et al.* v. *Eastman Richard et al.*, decided June 2, 1919, and not yet officially reported:

"By the Act of 1908, which imposed the restrictions on alienation and contained the leasing provision, Congress further declared, in section 9, 'that the death of any allottee * * * shall operate to remove all restrictions upon the alienation of the allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee.' In the absence of the proviso it would be very plain that on the death of the allottee all restrictions on the alienation of the land allotted to him were removed. But the proviso is there and cannot be disregarded. It obviously limits and restrains what precedes it. In exact words, it puts full-blood Indian heirs in a distinct and excepted class and forbids any conveyance of any interest of such an heir in such land unless it be approved by the court named. *In other words, as to that class of heirs the restrictions are not removed*, but merely relaxed or qualified to the extent of sanctioning such conveyances as receive the court's approval. Conveyances without its approval fall within the

ban of the restrictions. That the agency which is to approve or not is a state court is not material. It is the agency selected by Congress, and the authority confided to it is to be exercised in giving effect to the will of Congress in respect of a matter within its control. Thus, in a practical sense, the court in exercising that authority acts as a federal agency, and this is recognized by the Supreme Court of the state. *Marcy* v. *Board of Com'rs,* 45 Okla. 1. Plainly, the restrictions have the same force and operate in the same way as if Congress had selected another agency, exclusively federal, such as the Superintendent for the Five Civilized Tribes.

"In cases presenting the question whether lands inherited from allottees by full-blood Indian heirs are freed from restrictions by section 9, and thus brought within another provision in the same act declaring that land 'from which restrictions have been or shall be removed' shall be taxable and subject to other civil burdens, the Supreme Court of the state and the federal court of that district have both held that under the proviso such land remains restricted in the hands of the full-blood heirs, and so is not within the taxing provision. *Marcy* v. *Board of Commissioners, supra; United States* v. *Shock,* 187 Fed. 870.

"Entertaining a like view of the proviso, we conclude that the land covered by the lease is still restricted land."

We desire again to advert to the deed executed by Annie Harris on January 15, 1908, and approved

by the Secretary of the Interior on July 6, 1910. We have endeavored to show that the Act of May 27, 1908, was a new and comprehensive system adopted by Congress for the administration of the affairs of the Five Civilized Tribes, and was intended as a substitute, and to supersede the Act of April 26, 1906, and that thereby section 22, authorizing the approval of deeds by full-blood Indian heirs by the Secretary of the Interior, was repealed. In presenting this argument we have not left out of consideration the case of *United States* v. *Knight et al.*, 206 Fed. 145, which holds that the validity of a deed of an Indian heir depends on the law in force at the date of the deed and hence, where a conveyance by a sole Indian heir for an inherited allotment was dated October 12, 1908, and was approved by the County Court having jurisdiction of the settlement of the estate of the ancestor, it was valid without the approval of the Secretary of the Interior, though the ancestor died prior to the adoption of the Act of 1908. But in so far as that case held that validity of deeds of Indian heirs depends on the law in force at the date of the deed, it was, in our judgment, obiter. It was not necessary for the court to decide that question, because no deed antedating the Act of 1908, was before it, as in the case at bar. The sole question before the court was whether or not a deed dated October 12, 1908, approved by a court having jurisdiction of the settle-

ment of the estate of the deceased, was valid without the approval of the Secretary. In the present case the question is, Was a deed dated January 15, 1908, and having the approval of the Secretary of the Interior, dated July 6, 1910, a valid deed? It is respectfully submitted that the Secretary of the Interior was without authority to approve any deed of a full-blood Indian subsequent to the date when the Act of 1908 took effect.

III.

Restricted Lands of *Living* Minors Cannot Be Sold by Order of Court, or Otherwise.

Amos and Elizabeth were living full-blood minor heirs at the date of the deed executed by their guardian, conveying their interests in the lands of their deceased brother, Freeland Francis, to Lightsey and Taylor. Under this state of facts, the question to be decided is: Were those lands, so inherited by Amos and Elizabeth, and in their hands at that time, "*restricted lands*" within the meaning of the proviso attached to the fourth paragraph of Section 6 of the Act of May 27, 1908? Appellants contend that they were restricted lands, coming within the meaning of that proviso, and were not, therefore, subject to sale by order of court or otherwise. The proviso in question reads as follows:

"Provided, That no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of the court, or otherwise."

A determination of this question rests upon the proper interpretation to be given to the first proviso of Section 9 of the Act of May 27, 1908, which requires the conveyance of any interest of any full-blood Indian heir to be approved by the court having jurisdiction of the settlement of the estate of the deceased ancestor, and, to reach a proper interpretation of that proviso, as related to the proviso above quoted from Section 6, it is necessary to consider Sections 1, 5, 6 and 9, and, insofar as applicable, those Sections read as follows:

"*Sec. 1:* That from and after sixty days from the date of this act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or encumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood, including minors, shall be free from all restrictions. All lands, except homesteads, of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions. All homesteads of said allottees enrolled as mixed-blood

Indians having half or more than half Indian blood, including minors of such degree of blood, and all allotted lands of enrolled full-bloods, and enrolled mixed-bloods of three-quarters or more Indian blood, including minors of such degrees of blood, shall not be subject to alienation, contract to sell, power of attorney, or any other encumbrance prior to April twenty-sixth, nineteen hundred and thirty-one, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe. The Secretary of the Interior shall not be prohibited by this act from continuing to remove restrictions as heretofore, and nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this act * * * "

"*Sec. 5:* That any attempted alienation or encumbrance by deed, mortgage, contract to sell, power of attorney, or other instrument or method of encumbering real estate, made before or after the approval of this act, which affects the title of the land allotted to allottees of the Five Civilized tribes prior to removal of restrictions therefrom, and also any lease of such restricted land made in violation of law before or after the approval of this act shall be absolutely null and void."

"*Sec. 6:* That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law,

be subject to the jurisdiction of the probate courts of the State of Oklahoma. * * * Supplemental to the funds appropriated and available for expenses connected with the affairs of the Five Civilized Tribes, there is hereby appropriated, for the salaries and expenses arising under this section, out of any funds in the Treasury not otherwise appropriated, the sum of ninety thousand dollars, to be available immediately, and until July first, nineteen hundred and nine, for expenditure under the direction of the Secretary of the Interior: *Provided,* That no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of the court, or otherwise."

"*Sec. 9:* That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided,* That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: *Provided further,* That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March fourth, nineteen hundred and six, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; but if no such issue survive,

then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nineteen hundred and thirty-one, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions; *Provided further,* That the provisions of section twenty-three of the act of April twenty-sixth, nineteen hundred and six, as amended by this act, are hereby made applicable to all wills executed under this section."

The question here presented has never before been presented this court. It has, however, been before the Supreme Court of the State of Oklahoma in the case of *Chupco, et al.* v. *Chapman, et al.*, decided October 2, 1917, 170 Pac. 259. The conclusion reached by the Supreme Court of the State of Oklahoma is adverse to the position taken by the appellants here. We shall have occasion later to comment on the views of that court as expressed in that opinion.

The Circuit Court of Appeals for the Eighth Circuit, in *Okla Oil Co.* v. *Bartlett,* 236 Fed., 488, has designated the requirement of the approval of the probate court of deeds executed by full blood Indian heirs a specific restriction, and in *Parker et al.* v. *Richard et al.,* this court has said that such approval

puts full-blood Indian heirs in a distinct and excepted class, and that as to that class of heirs, the restrictions are not removed, but merely relaxed or qualified, and that conveyances without the approval of the probate court fall within the ban of the restrictions. In support of these views, as expressed in the decision last mentioned, this court cited with approval an opinion by the Supreme Court of the State of Oklahoma in the case of *Marcy* v. *Board of Commissioners,* 45 Okla. 1. In this case the Supreme Court of Oklahoma defines the term "restrictions upon alienation" as follows:

> "The words—'restrictions upon alienation'—as used in the Act of May 27, 1908, mean those restraints or limitations imposed by law upon the power of the owners of the lands mentioned to voluntarily convey the same free from supervision or control of some agency designated by Congress,"

and it was accordingly held by that court that inherited lands in the hands of full-blood Indian heirs were restricted and, therefore, not subject to taxation, because of the first proviso contained in Section 9, and this court, referring to that opinion in *Parker* v. *Richard,* said:

> "Entertaining a like view of the proviso, we conclude that the land covered by the lease is still restricted land."

In *Parker* v. *Richard* the land involved was inherited land, held and owned by a full-blood Indian heir, which had been leased during the lifetime of the deceased allottee under Section 2 of the Act of May 27, 1908. The question was, were the royalties derived from the land, both before and after the death of the allottee, subject to administration by the Secretary of the Interior, under rules and regulations made by him, or were the administrators of the deceased allottee entitled to such royalties. The answer to the question was made to depend upon the further question as to whether or not the land was restricted both before and after the death of the allottee, and upon that question this court said:

> "Under the Act of 1908, as already shown, leases of 'restricted lands' for oil and gas mining may be made with the approval of the Secretary of the Interior, under regulations prescribed by him, 'and not otherwise.' The present lease was made and approved under that provision. The land was then restricted and the restrictions have not since been removed. Thus the event which the regulations and the lease declare shall terminate the supervision by the Secretary of the Interior of the collection, care and disbursement of the royalties has not occurred. Nor has the occasion for some supervision disappeared. The heir is a full-blood Indian, as was the allottee, and is regarded by the Act as in need of protection, as was the allottee. In

the absence of some provision to the contrary the supervision naturally falls to the Secretary of the Interior. (R. S. Secs. 441-463; *West* v. *Hitchcock,* 205 U. S. 80-85; and see *Catholic Bishop of Nesqually* v. *Gibbon,* 158 U. S., 155-166.) There is nothing to the contrary in the leasing provision or in any other of which we are aware. True, it is possible under the proviso in Sec. 9 for the heir, if the court approves, to sell and convey his interest in the land. But that has not been done, and it well may be that the heir will remain the owner until the restrictions expire in regular course—April 26, 1931. There is nothing in the proviso indicating that it is intended in the meantime to take from the Secretary or to commit to the court the supervision of matters pertaining to the lease or the royalties. A purpose to do that doubtless would be plainly expressed.

"In this situation we think the authority of the Secretary of the Interior to supervise the collection, care and disbursement of the royalties has not terminated."

A more recent case than *Parker* v. *Richard, supra,* is that of *United States* v. *John Hinkle et al.,* decided September 1, 1919, by the Circuit Court of Appeals for the Eighth Circuit. In that case the land involved was land that had been allotted to a Choctaw Indian duly enrolled as a full-blood, who had died and left surviving, as his sole and only heir at law, his daughter, who was likewise an enrolled Choctaw

of the full-blood. The allottee died December 29, 1903, and on January 5, 1916, the daughter conveyed the land by a deed which was duly approved by the probate court having jurisdiction of the settlement of the estate of the deceased allottee. The deed contained a recital that it conveyed not only the land, but "all claims and demands for rents, revenues and profits of whatsoever description that have theretofore accrued from said land." It was conceded that the deed was valid as to the land, but it was contended, by the United States as plaintiff, that the recital quoted was ineffective to convey the theretofore accrued mineral rents and profits. The contention of the United States was upheld upon the theory that the land was restricted not only in the hands of the original allottee, but in the hands of his daughter, as his sole heir at law, until she parted with her title by the execution of her deed on January 5, 1916, duly approved by the court having jurisdiction of the settlement of the estate of her deceased father.

That court follows the opinion of this court in *Parker* v. *Richard,* and construes the opinion of this court in that case to mean that the first proviso of Section 9 of the Act of 1908 constituted a restriction upon the conveyance of the land, notwithstanding the other language of the same section which provides that the death of any allottee shall operate to remove

all restrictions upon the alienation of the allottee's lands. The court then proceeds to say:

> "So far, therefore, as the present record is concerned, the land in controversy was restricted land down to January 5, 1916. *Gannon* v. *Johnson,* 234 U. S. 108; *Brader* v. *James,* 246 U. S. 88; *Tally* v. *Burgess,* 246 U. S. 104. This being so, the defendants must account to the United States for any mineral rents and profits unlawfully received by the defendants, or either of them, during that period. * * * The last restriction on the alienation of the land was removed by the sale thereof with the approval of the County Court."

In another part of the same opinion, the court said:

> "The right to an accounting, however, for the mineral rents and profits received by the defendant Mullen and his co-defendants still remains unless the language quoted from the deed of conveyance had the effect to deprive Sophia Robert, *nee* Cash, and the United States, of all right to an accounting for the mineral rents and profits alleged to have been unlawfully received by the defendants from 1904 to January 5, 1916. We are of the opinion, however, that under Sections 19 and 20 of the Act of April 26, 1906 (34 Stat. 137), and Section 2 of the Act of May 27, 1908 (35 Stat., 312), and the regulations of the Secretary of the Interior promulgated July 7, 1906, June 11, 1907 and April 20, 1908, the exclusive custody and control of mineral rents and

profits derived from restricted lands of full-blood tribal Indian citizens of the Five Civilized Tribes is vested in the Secretary of the Interior, subject only to such rules and regulations as he may prescribe, as an independent trust fund separate and distinct from the trust estate in the land itself and that the rules and regulations referred to show that the Secretary has elected to administer this trust and to retain the custody and control of such funds 'until such time or times as the payment thereof is considered best for the benefit of said lessor, or his or her heirs,' (Reg. Sec. Int.) and therefore the language quoted from the conveyance of January 5, 1916, of Sophia Robert, *nee* Cash, to J. S. Mullen was ineffective to release the grantee Mullen and the other defendants from the claim of the United States in behalf of the grantor to the mineral rents and profits which had been unlawfully received by the defendants prior to said date, nor did the approval of the County Court affect the matter of mineral rents and profits as that was a matter beyond its jurisdiction. It was determined by the Supreme Court of the United States in the case of *Gabe E. Parker, Superintendent, et al. Appellants* v. *Eastman Richard and R. D. Martin, Co-administrators, etc.*, (June 2, 1919) that the proviso contained in the Act of 1908 (35 Stat., 312), providing 'That no conveyance of any interest of any full-blooded Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee,' was a restriction upon the conveyance of the land notwithstand-

ing the other language of Section 9 which provides that the death of any allottee should operate to remove all restrictions upon the alienation of the allottees' land."

These authorities lead irresistibly to the conclusion that the lands allotted to Freeland Francis, deceased, were, in the hands of Amos and Elizabeth as his heirs of the full-blood, *restricted* lands, by reason of the first proviso contained in Section 9 of the Act of May 27, 1908. But the Eighth Circuit Court of Appeals was of the opinion that the sale and confirmation made under the general Statutes of the State of Oklahoma by the County Court of Okmulgee County was sufficient to pass title to Lighty and Taylor because that Court had jurisdiction of the guardianship of Amos and Elizabeth, and the subject-matter and the parties (Tr. of Rec., 197). But it is respectfully suggested that the Legislature of the State of Oklahoma is without jurisdiction or authority to enact statutes in any wise affecting the restricted lands of the Five Civilized Tribes. That power resides with Congress.

In *Parker* v. *Richard*, this court, speaking of a full-blood Indian heir, said: "Just when the United States shall cease to sustain her relation of guardian to these full-blood Indians seems, under decisions, a matter for Congress to determine," citing in support thereof *Brader* v. *James, supra; Tiger* v. *Western*

Investment Company, supra; United States v. *Nice,* 241 U. S. 591, and *Heckman* v. *United States,* 224 U. S. 413. It follows that the general statutes of the State of Oklahoma can not be invoked to sustain a deed executed by an Indian heir of a full-blood, especially when Congress has legislated specifically upon that subject. Congress had a purpose in requiring a deed by a full-blood Indian heir to be approved by the court having jurisdiction of the settlement of the estate of the deceased ancestor, otherwise, the first proviso to Section 9 would not have been enacted. That proviso must be given a meaning. It can not be ignored by the courts, nor can courts read out of it its application to minor full-blood Indian heirs when Congress itself made no exception as to such heirs. We have seen in *Campbell* v. *Wadsworth, supra,* that the courts can not read into a statute a provision not placed there by Congress, and it must be equally true that the courts can not read out of a statute a provision which Congress has placed in it.

As we have heretofore stated, the decision of the Supreme Court of the State of Oklahoma in the case of *Chupco* v. *Chapman,* 170 Pac., 259, is adverse to the second and third propositions advanced in this brief. The decision in that case was rendered October 2, 1917, and the opinion in this case by the Eighth Circuit Court of Appeals was filed April 30,

1918. It does not appear that the Court of Appeals knew of the *Chupco-Chapman* case. At least, no reference is made to it in the opinion filed by the Circuit Court of Appeals. The two opinions, however, agree in some respects. The Eighth Circuit Court of Appeals was of the opinion that a sale of inherited full-blood lands, followed by a confirmation by the court having jurisdiction of the guardianship proceedings, answered all the requirements of the first proviso to Section 9. In that view of the matter the Oklahoma Supreme Court agreed, going to the extent of saying that under the general statutes of the State of Oklahoma providing procedure for transferring title of lands of minors, it must be made to appear to the court that necessity exists for the sale before the court having jurisdiction orders the sale, and after jurisdiction is acquired, the sale is under the supervision of the court, and that thus the protection intended by Congress, in providing that the conveyance should be approved, is accorded the minors. In that case, however, the sale and confirmation was made not only by the court having jurisdiction of the guardianship of the minors, but jurisdiction of the settlement of the estate of the deceased allottee as well. It was the opinion of the court that no approval, separate and apart from the confirmation, was required, but that the confirmation operated in all respects as an approval. The court took occasion,

and in this it is to be distinguished from the opinion of the Eighth Circuit Court of Appeals in this case, to say:

> "It must not be overlooked, however, that the court that approved the guardian's sales is the same court having jurisdiction of the settlement of the estate of the deceased allottee. The question as to whether or not, in cases where the guardians' sales were conducted in a different county court from that having jurisdiction of the settlement of the estate of the deceased allottee, the approval of the latter court is required, is not before us, and we express no opinion thereon."

The *Chupco-Chapman* case differed, too, in another respect from the opinion of the Eighth Circuit Court of Appeals in that it held the proviso of Section 9 to extend to minors as well as adults, and upon that question the Supreme Court of the State of Oklahoma said:

> "There is nothing in Section 9 to indicate that Congress intended to draw a distinction between the adult full-blood heirs and the minor full-blood heirs with reference to the alienability of their inherited allotments, and it is reasonable to suppose that, if Congress intended that the interests inherited by full-blood minors in such lands should not be conveyed or subject to sale, it would doubtless have expressed such intention in unequivocal terms in section 9. There is nothing in the Act of May 27, 1908, that evidences a

change in policy of Congress with reference to the alienability of such lands, except homesteads of certain allottees, which are governed by the second proviso of Section 9."

To the contrary of our third proposition, however, the *Chupco-Chapman* case is direct authority, but a reading of the case will easily develop that it proceeds upon theories inconsistent with *Parker* v. *Richard, United States* v. *Hinkle, Gannon* v. *Johnson,* 243 U. S. 108, and other Federal cases. In *Gannon* v. *Johnson* the facts were that the land in controversy was allotted to Agnes Wolf, a full-blood Chickasaw Indian. Upon her death in 1903 the title passed to her brother, and sole heir at law, Wilburn Wolf. On October 13, 1903, Wilburn Wolf conveyed the allotment by warranty deed to one A. J. Waldock, and out of this conveyance grew a number of other transfers. On January 4, 1909, Wilburn Wolf executed and delivered to D. R. Johnson a warranty deed to the land, which deed was approved by the County Judge of Pontotoc County, Oklahoma, on March 23, 1909, and by the Secretary of the Interior on July 2, 1910. The question was as to which of the deeds executed by Wilburn Wolf, as the sole heir of the allottee Agnes Wolf, was valid, and a determination of that question depended upon the further question as to whether or not the restrictions were personal, or whether they ran with and bound the land in the

hands of the full-blood Indian heir. Upon that point the court quoted approvingly from the case of *Bowling* v. *United States,* 233 U. S. 528, and said:

> "We think this principle is controlling here, and that it was the intention of Congress to make a restriction which should bind the surplus lands, whether in the hands of the original allottee in his life time, or of his heirs after the decease of the original allottee, during the period named. The restriction was upon alienation of lands as such, and was not merely personal to the allottee, any more than it was in the *Bowling* case."

In the instant case, by Section 5 of the Act of May 27, 1908, it was provided that any attempted alienation or encumbrance, by deed, mortgage, contract of sale, power of attorney, or other instrument or method of encumbering real estate, made before or after the approval of the Act, prior to the removal of restrictions, should be absolutely null and void. When the first proviso of Section 9 is considered in connection with Section 5, the reasoning, that the restrictions run with the lands in the hands of the full-blood heirs, possesses even greater force than the decision in *United States* v. *Gannon,* because Sections 5 and 9, taken together, continue the restrictions which are to run with the land to April 26, 1931, as provided by Section 1, to allotted lands in the hands of full-blood Indian heirs, and this is the view of this court, as we understand it, in *Parker* v. *Richard,* and

of the United States Circuit Court of Appeals in the case of *United States* v. *Hinkle*. For that reason, we say that the *Chupco-Chapman* case proceeded upon the erroneous theory that the restrictions were personal, and did not run with the land.

It is conceded that the proceedings for the sale of the interests of Amos and Elizabeth in the allotment of their deceased brother were, in all respects, regular and in accordance with the general statutes of the State of Oklahoma governing the sales of lands of minors, but, notwithstanding the regularity of those proceedings under those statutes, we contend that the guardian's deed, executed pursuant thereto, was null and void:

1st: Because it lacked the approval of the court having jurisdiction of the settlement of the estate of Freeland Francis; and

2nd: Because the restricted lands of living minors can not be sold or encumbered by order of the court, or otherwise.

In the *Chupco-Chapman* case the Supreme Court of the State of Oklahoma construed the proviso of Section 6, concerning restricted lands of living minors, to relate back to Section 1 of the Act of May 27, 1908, and gave as the reason that, except for the proviso, it might be contended that Section 6, coming later in the Act, operated as a repeal of the restric-

tions placed by the terms of Section 1 on certain allotments of living minors, and conferred jurisdiction on the probate courts to sell all the allotted lands of living minors. We can not see the force of this reasoning. By Section 1 it was provided that all allotted lands of enrolled full-bloods, including minors of such degree of blood, should not be subject to alienation, contracts of sale, power of attorney, or any other encumbrance prior to April 26, 1931, except that the Secretary of the Interior might remove such restrictions, wholly or in part, under such rules and regulations, concerning the terms of sale and disposal of the proceeds for the benefit of the respective Indians, as he might prescribe, and that the Secretary of the Interior should not be prohibited from continuing to remove restrictions as theretofore.

Here was, and is, a provision made by Congress in the most precise language, in language whose meaning can not be mistaken, that the allotted lands of living minors could not be sold prior to April 26, 1931, and there could be no possible reason why any probate court of the State of Oklahoma should fail to understand it. The words employed to create restrictions on the allotted lands of full-blood minors are free from any and all ambiguity. They are plain, ordinary, everyday words, and no court decision is required to explain their meaning. The words speak for themselves. There would seem to be no reason,

therefore, why the proviso contained in Section 6, as to the restricted lands of living minors, should be made to relate back to and qualify Section 1. It is much more reasonable that this proviso relates to, and qualifies, other provisos imposing restrictions upon certain classes of Indians. For instance, by Section 2 of the Act the term "minor or minors" is made to embrace all males under the age of twenty-one years and all females under the age of eighteen years. By reason of this provision minority has been held to be a Federal restriction such that majority rights cannot be conferred upon a male minor allottee of the Five Civilized Tribes under the general statutes of the State of Oklahoma, nor does the marriage of a female allottee operate to give her the custody and control of her property, as provided by the same statutes. This has been held to be the law by all the courts, including this court in the case of *Truskett* v. *Closser, supra.*

Again, in *Chupca* v. *Chapman,* the Oklahoma Supreme Court says that the "inhibition against the alienation of 'restricted lands,' as the words are employed in the proviso of Section 6, had reference only to 'restricted lands' mentioned in the preceding provisions of the Act, and not to inherited lands subsequently referred to and governed by Section 9." The court then proceeded to argue this proposition by stating that it was obviously the intention of Con-

gress that the death of a minor allottee should operate to remove all restrictions upon said allottee's land, as well as upon land of adult allottees, and that the word "living" as used in the proviso was inserted therein to make clear the purpose of Congress that the proviso was not intended to withdraw the allotments of deceased minors from the operation of Section 9.

We respectfully submit that the Oklahoma Supreme Court is inconsistent in its reasoning. It first argues that the proviso as to living minors in Section 6 relates back to restricted lands mentioned in the preceding provisions of the Act, and next argues that the word "living" contained in the proviso to Section 6 was intended to make clear a purpose upon the part of Congress to withdraw the allotments of deceased minors from the operation of Section 9. In other words, it argues, *first*, that the proviso relates forwards, and not backwards, and, *second*, that it relates backwards.

Again, in *Chupco* v. *Chapman* the court said:

> "It is clear from the language of Section 9 that after the death of an allottee of the Five Civilized Tribes the allottee's land, as such, is not restricted, except that under the terms of the second proviso of said section the homestead of said deceased allottee, having one-half or more Indian blood, who dies, leaving surviving issue

born since March 4, 1906, is made inalienable for the use and support of such issue during their life or lives until April 26, 1931, unless restrictions against alienation are removed therefrom by the Secretary of the Interior. With the exception of such homesteads, restrictions are not on these inherited lands, but are personal to the full-blood Indian heirs."

In the light of *Parker* v. *Richard, supra; United States* v. *Hinkle, supra; Bowling* v. *United States, supra; Gannon* v. *Johnson, supra,* this position of the Oklahoma Supreme Court is not tenable.

By Section 1 of the Act of May 27, 1908, restrictions on the lands of full-blood minors are made to continue to April 26, 1931. By Section 5 any attempted alienation of the land is made absolutely null and void. By Section 6 no restricted lands of living minors shall be sold by order of court or otherwise. By Section 9 death removes all restrictions, but provides that in the instance of full-blood Indian heirs no conveyance of the land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of the deceased allottee. It will thus be seen that the restrictions imposed by Section 1 extend to April 26, 1931, and are continued in the hands of a full-blood Indian heir until such time as he may convey his interest by a deed approved by the court having jurisdiction of the settlement of the es-

tate of the deceased ancestor, under the first proviso of Section 9.

In this connection, it may not be inappropiate to quote what this court said in *Talley* v. *Burgess, supra*, with reference to Section 22 of the Act of April 26, 1906, as follows:

> "It is contended that this section applies only to heirs of a deceased Indian whose selection has been made by himself, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which the decedent belonged. But in our view Congress in the passage of Section 22 had in contemplation that Indians duly enrolled and entitled to share in the tribal property and lands might die before receiving the allotment to which he or she was entitled. Congress had made provision in Section 20 of the Cherokee Agreement that such lands might be allotted in the name of the deceased, and should with the proportionate share of the other tribal property descend to the heirs of the one who would have been entitled, if living. It also provided that the selection for a decedent should be made by a duly appointed administrator or executor, or, in default of such selection, the Dawes Commission should designate the land to be allotted. We think minor heirs who thus receive lands are within the meaning and purpose of the statute, as much so as they would have been had the land been selected by the ancester in his lifetime."

But we contend that the lands of Freeland Francis in the hands of Amos and Elizabeth were restricted lands, and inasmuch as they were living minors at the date of the execution of the deed by their guardian under orders of the probate court of Okmulgee County, that deed was null and void and conveyed nothing to the grantees, Lightsey and Taylor.

What did Congress mean when it said, by way of proviso to Section 6, "that no restricted lands of living minors shall be sold or encumbered except by leases authorized by law by order of the court, or otherwise?" The court to which reference is made is evidently the probate court mentioned in previous paragraphs of the act. Those are the only courts in Oklahoma possessing jurisdiction to sell the lands of minors. The term "or otherwise" is probably meant to embrace all other means by which lands of minors may be sold, although, in Oklahoma, we know of no such means except orders of the probate courts. Of course, a minor's land may be sold in a partition proceeding, or in a proceeding to enforce a lawful lien, and it may be that Congress had these and similar proceedings in mind at the time the proviso was enacted, and desired to provide against the sale of restricted lands of living minors for such purposes. If Congress had meant to except inherited lands in the hands of full-blood minor Indian heirs from the operation of the proviso, we apprehend that such an

exception would have been made, but, inasmuch as it was not made, we must accept the proviso as we find it, and inasmuch as we find in it no technical terms requiring peculiar construction and definition, we can but conclude that Congress meant precisely what it said, and that is, that no restricted lands of living minors should be sold, by order of court or otherwise. There is nothing in this language that is unusual or technical except, possibly the word, "restricted," and that word had such a well-defined usage and meaning in the previous Acts of Congress and decisions by the courts at the time when the Act of May 27, 1908, was under consideration, that its meaning was then, as now, clearly understood.

Suppose we accept the theory advanced in the opinion of the Eighth Circuit Court of Appeals in this case, which says:

> "The true construction of Section 9 of the Act of May 27, 1908, is that it is prospective and not retrospective in effect; that it applies to conveyances made after its passage, and is inapplicable to those made before its enactment."

If it is prospective in its effect as to conveyances, then, assuredly, it must be prospective in its effect as to the result of the death of an allottee, in that, it recites that such death removes all restrictions from the lands of the allottee. Why would it not, therefore, apply solely to those who died and left lands to

be inherited subsequent to the date of its passage? If this is the proper construction to be placed upon the Act, then Section 9 would seem to pertain in no way to the facts in this case, because the lands allotted in the name of Freeland Francis were selected after his death, and Section 22 of the Act of April 26, 1906, would govern their alienation.

There is something to be said in favor of the opinion of the Eighth Circuit Court of Appeals on this point. How could the death of Freeland Francis, on the 22nd day of June, 1905, operate to remove restrictions on lands which had not even then been selected, and which were not selected until December 4, 1907? Perhaps, after all, Congress had such lands as those in mind when it enacted the proviso to Section 6 concerning the restricted lands of living minors, because restrictions were re-imposed upon those lands by the Act of April 26, 1906, under the decision of this court in *Talley* v. *Burgess, supra.* That is, prior to the passage of the Act of April 26, 1906, the lands of Freeland Francis, in the hands of Amos and Elizabeth, were unrestricted, and restrictions were imposed on those lands in the hands of Amos and Elizabeth, as the heirs of Freeland Francis, by the Act of April 26, 1906. In that case they were, and are, as much restricted as are the lands upon which restrictions are imposed by Section 1 of the Act of May 27, 1908. This conclusion would seem to follow

from what the Eighth Circuit Court of Appeals has said in its opinion.

Another proposition advanced by the Circuit Court of Appeals in its opinion in this case would seem to support these views, and that is, the conclusion reached by the court that the true interpretation of the Act of May 27, 1908, is that conveyances of *adult* full-blood Indian heirs are subject to the first proviso of Section 9, but that that proviso is *inapplicable* to guardians' conveyances of the interests of *minor full-blood* Indian heirs which have been regularly made pursuant to the orders of County Courts of Oklahoma which had jurisdiction of the subject-matters and the parties to the proceedings before them. If this conclusion is right, it logically follows that when Congress said that no restricted lands of living minors should be sold by order of court or otherwise it must have had in mind minors situated, with reference to inherited lands, just as are Amos and Elizabeth in this instance.

The reasoning is, that Freeland Francis died on the 22nd day of June, 1905, and on the 4th day of December, 1907, the lands in controversy were selected and allotted to him by the Commission to the Five Civilized Tribes, in his name. Amos and Elizabeth, who survived him, succeeded to an interest in those lands as his heirs. They were Indian minors of the

full-blood, as was Freeland Francis, their deceased brother. In this situation of their affairs, Congress passed the Act of April 26, 1906, and in the *Talley-Burgess* case and the *Brader-James* case, this court said that by Section 22 of that Act restrictions were imposed upon the interests of Amos and Elizabeth in the lands allotted to Freeland Francis. In *Parker* v. *Richard* and *United States* v. *Hinkle,* this court unequivocally held that inherited lands in the hands of full-blood Indian heirs are restricted lands. It follows that the lands of Freeland Francis, in the hands of Amos and Elizabeth, were restricted lands regardless of Section 9 of the Act of 1908. In other words, the lands of Freeland Francis in the hands of Amos and Elizabeth were restricted lands by virtue of Section 22 of the Act of April 26, 1906, and not of the Act of May 27, 1908, and when Congress said that restricted lands of living minors could not be sold or encumbered by order of court or otherwise, it was referring to the lands of living minors restricted by the Act of 1906.

We can thus accept the opinion of the Eighth Circuit Court of Appeals so far as Amos and Elizabeth are concerned, and so far as the application of Section 9 to the lands in controversy is concerned, and still apply the proviso as to living minors contained in Section 6 to Amos and Elizabeth and their lands inherited from Freeland Francis. We can ex-

punge Section 9 from the Act altogether and still do this. It is not, therefore, that restrictions imposed by Section 9 upon inherited lands in the hands of full-blood heirs only, that are to be regarded as restricted lands without the meaning of the proviso to Section 6, but other restricted lands similar to those last noted may be included within the terms of that proviso. It may well be that Congress supposed Section 22 of the Act of April 26, 1906, to be still in effect insofar as it provides for the alienation of inherited lands by minor heirs, and by the proviso to Section 6 it was sought to obviate sales made pursuant to that section, and to give to the Secretary jurisdiction to make them by the removal of restrictions. This would seem to be especially true if, as held by the Circuit Court of Appeals, Section 9 of the Act of 1908 does not apply to minors.

Possibly the meaning of the proviso to Section 6 was intended to limit the power of the Secretary of the Interior, as embraced in Section 1 of the Act of May 27, 1908, continuing in the Secretary the power to remove such restrictions as were therein provided, wholly or in part, under such rules and regulations concerning the terms of sale and the disposal of proceeds, as he might prescribe, and to limit the power of the Secretary to remove such restrictions and to sell such lands only as to those allotted to adult Indians of the full-blood. This theory is just as reas-

onable as that advanced in the *Chupco-Chapman* case, which makes the proviso to Section 6 relate back to that part of Section 1 providing for restrictions on Indians of the full-blood, and minors of the same degree of blood.

In fact, there are many theories that may plausibly be advanced as to why Congress inserted the proviso to Section 6, respecting the restricted lands of living minor heirs, but the truth is that Congress did insert that proviso to that section, and the language in which it is couched would seem to mean that Congress intended precisely what was said, and that is that no restricted lands of living minors should be sold or encumbered by order of court, as was sought to be done in the instant case.

It is respectfully submitted that the action of the Circuit Court of Appeals for the Eighth Circuit, and the United States Court for the Eastern District of Oklahoma, should be reversed.

JAMES C. DAVIS,
Creek National Attorney.

Supreme Court, U. S.
FILED
JAN 5 1920
JAMES D. MAHER,
CLERK.

No. [redacted]51

In the

Supreme Court of the United States.

October Term, 1919.

ANNIE HARRIS, Formerly ANNIE FRANCIS; AMOS FRANCIS and ELIZABETH FRANCIS, Minors, Appearing by W. C. FRANKLIN, Guardian *Ad Litem*, - - - - - - - - - *Appellants*,

vs.

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. LAMB, A. B. MILLER, MAUDE MITCHELL, W. H. HARRIS, L. A. BELL, H. L. LIGHTSEY, JOHN R. TAYLOR, MACK FRANCIS, J. ORLANDO MITCHELL, HOWELL H. BROWN, THOMAS W. DANIEL, LAURA L. McGINNIS, R. C. MARTIN, H. M. KIRKPATRICK, J. S. KIRKPATRICK, JOHN V. McMAHON, A. W. SHULTHIS, E. J. LAMBERT, W. H. WHITFORD, R. L. EBLING, GERTRUDE WOMACK, HARRY F. EAGAN, EUGENE W. GILL and THE HOPPY-TOAD OIL & GAS COMPANY, a Corporation, - *Appellees*.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Supplemental Brief of Appellants.

JAMES C. DAVIS,
Crook National Attorney.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No. 186.

ANNIE HARRIS, Formerly ANNIE FRANCIS; AMOS FRANCIS and ELIZABETH FRANCIS, Minors, Appearing by W. C. FRANKLIN, Guardian *Ad Litem*, - - - - - - - - - *Appellants*,

vs.

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. LAMB, A. B. MILLER, MAUDE MITCHELL, W. H. HARRIS, L. A. BELL, H. L. LIGHTSEY, JOHN R. TAYLOR, MACK FRANCIS, J. ORLANDO MITCHELL, HOWELL H. BROWN, THOMAS W. DANIEL, LAURA L. McGINNIS, R. C. MARTIN, H. M. KIRKPATRICK, J. S. KIRKPATRICK, JOHN V. McMAHON, A. W. SHULTHIS, E. J. LAMBERT, W. H. WHITFORD, R. L. EBLING, GERTRUDE WOMACK, HARRY F. EAGAN, EUGENE W. GILL and THE HOPPY-TOAD OIL & GAS COMPANY, a Corporation, - *Appellees.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

SUPPLEMENTAL BRIEF OF APPELLANTS.

I.

The District Court for the Eastern District of Oklahoma found that the devolution of the estate of Freeland Francis was governed by the Arkansas law of descent and distribution, and that upon the issuance of a certificate of allotment, the mother, Annie, inherited and became seized in fee simple of an undivided one-half interest in and to the allotment, and that the children, Elizabeth, Amos and Mack, sister and brothers respectively, inherited, and became seized in fee simple of an undivided one-sixth interest, each, therein. The contention was made in the Circuit Court of Appeals that the devolution of the estate was controlled by the law of the State of Oklahoma, by virtue of section 21 of the Enabling Act. The Circuit Court of Appeals, however, dismissed this contention on the ground that the deeds of Annie, and of the guardian of Amos and Elizabeth were valid, and that the question of the devolution of the estate was no longer in the case. It is insisted here that those deeds were invalid and, hence, that that question is in the case, and a proper subject for consideration by this court.

In this view of the matter, the attention of the court is invited to the case of *Jefferson et al.* v. *Fink et al.*, 247 U. S. 288, wherein it was held by this court that, on the admission of the State of Oklahoma to

the Union, the statutes of that state supplanted the Arkansas statutes, and governed the descent and distribution of Creek allotments.

The attention of the court is further invited to the case of *McKee* v. *Henry*, 201 Fed. 74, wherein it is held by the Circuit Court of Appeals for the Eighth Circuit as follows:

> "The enrolling primarily established the right of citizenship, and only incidentally conferred the right to allotment, and until allotment was made no inheritable right vested in an individual Indian,"

and again:

> "When the allotment was made for the first time the rights of any individual vested, and the title became vested in the one at that time fixed by law, it makes no difference what previous laws may have provided.
>
> "In the conclusion we have reached we find that we are in harmony with the Supreme Court of Oklahoma. *Brady* v. *Sizemore*, 124 Pac. 615; *Shellenbarger* v. *Fewel*, 124 Pac. 617.
>
> "While our conclusion has been reached under the authority of the Supreme Court of the United States, of this court, and what seems to us sound reason, it is gratifying to find that there is a uniformity in the decisions of the state courts and this court."

It would seem to follow, from these decisions, and others that might be quoted, that the devolution of the allotment of a Creek Indian is governed by the law in force at the date of selection. In the instant case, Freeland Francis was born on the 30th day of April, 1903, and died on the 22nd day of June, 1905, without issue and unmarried. His father, William Francis, had previously died on the 6th day of April, 1905. Freeland Francis, therefore, left surviving him, as his sole heirs at law, his mother, Annie, his sister, Elizabeth, and his brothers, Amos and Mack. If the Arkansas law governed the devolution of the estate, then the mother became entitled to an undivided one-half, and the sister and brothers each to an undivided one-sixth, as found by the trial court, but the selection of the allotment in behalf of the deceased allottee was made on December 4, 1907, by the Commission to the Five Civilized Tribes, and on that date Oklahoma had been admitted to the Union as a state, and the Statutes of Oklahoma Territory, by virtue of section 21 of the Enabling Act, had been extended and put in force over the entire state, including that part of it comprising the Creek Nation. If, therefore, the law of Oklahoma governs the devolution of the estate, as of December 4, 1907, the date of selection, that law is to be found in the third paragraph of section 97, article 4, chapter 86, entitled "Wills and Succession," of Wilson's Revised and

Annotated Statutes of Oklahoma, 1903, which reads as follows:

> "If there be no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if a mother survive, she takes an equal share with the brothers and sisters."

Under this statute the mother, Annie, and each of the three children, Mack, Amos and Elizabeth, would inherit an undivided one-fourth interest in the allotment of Freeland Francis.

II.

We desire to revert briefly to our first proposition, that appellants took as allottees, for the purpose of inviting the attention of the court to the case of *Hall et al.* v. *Russell et al.*, 101 U. S. 503. This case is much in point upon that proposition. Freeland Francis was enrolled under the Act of March 3, 1905, but, as we have heretofore seen, that act, to be effective, must relate back to section 28 of the Original Creek Agreement and section 7 of the Supplemental Creek Agreement, providing for allotments to new born children. It will be noted, as we have heretofore had occasion to state, that, in the various Acts of Congress providing for the distri-

bution of lands allotted after death, there occurs invariably the words "The lands and moneys to which he would have been entitled if living shall *descend* to his heirs * * * and be *allotted* and *distributed* to them accordingly."

The case of *Hall* v. *Russell, supra,* involved the construction of the Oregon Donation Act, and the language of that act is, in many respects, extremely similar to the language employed in section 28 of the Original Creek Agreement and section 7 of the Supplemental Creek Agreement. That act provided for the acquirement of title to lands in Oregon by settlers on the terms and conditions therein named. Upon the fulfillment of those terms and conditions the settler became entitled to a patent, but, if he died before their fulfillment and the issuance of patent, then provision was made by section 4 for the disposition of his rights in the land, acquired up to the date of his death, by the language following:

> "Children or *heirs of the deceased shall be entitled to the share or interest of the deceased* in equal proportions, except where the deceased shall otherwise dispose of it by testament, duly and properly executed according to the laws of Oregon,"

and, in the instance of alien settlers, similar provision was made in the event of death before naturalization, in the language following:

> "But if any alien, having made his declaration of an intention to become a citizen of the United States, after the passage of this act, shall die before his naturalization shall be complete, the possessory right acquired by him under the provisions of this act shall *descend to his heirs at law, or pass to his devisees*, to whom, as the case may be, the patent shall issue,"

and by section 8 of the act, it was provided as follows:

> "*Section 8.* That, upon the death of any settler before the expiration of four years' continued possession required by this act, all the rights of the decedent, under this act, shall *descend to the heirs at law of such settler*, including a widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler, shall be sufficient to entitle them to the patent."

In that case one John Loring was the settler on the land in controversy. Having lived on it less than a year, however, he died, and left a will devising his interest in it to one Samuel Parker Hall. On the death of Loring, another party claimed title to the land as a settler in behalf of himself and wife, and the question was as to whether these latter parties were entitled to the land, or whether the devisee of Loring was entitled to it. This court stated the question to be as whether the heirs of a settler under

the act, who died before the expiration of the four years' residence and cultivation required, took by descent from the settler, or as donees of the United States; that, if they took by descent, it was concluded that the settler had a devisable estate, but, if they took as donees of the United States, the settler had no such estate as was devisable. It was concluded by the court that, "Under section 4 of the act that there was no grant of the land to the settler until he had qualified himself to take as grantee by completing his four years' residence and cultivation, and performing such other acts in the meantime as the statute required, in order to protect his claim and keep it alive. Down to that time he was an authorized settler on public lands, but was not a grantee."

Commenting on section 8, above quoted, this court said:

> "Here is a plain indication that the right of the settler before the expiration of his four years' continued possession was something less than a title in fee to the land, for the provision is not that the *land* shall descend, but the settler's *rights* only. Had it been supposed that the title was already in the settler, subject only to defeasance, if the conditions subsequent to the grant should not be performed, we cannot but think that provision would have been made for a transfer of the land free of the conditions, instead of only the settler's rights. The object of Congress, undoubtedly, was to allow a set-

tler's heirs to succeed to his possession and thus keep his rights alive. But for some such provision all rights of the settler would have been lost by his death. As the law required full four years' residence by the person who claimed the grant, if no provision had been made for a continuance of his possession the land would have become vacant on his death and open for a new settlement by a new settler, if the law authorizing new settlements still remained in force. Hence, it was provided that the possessory rights of a deceased settler should go to his heirs, and that they might get the land on making the requisite proof, without further residence and cultivation of their own. *Their title to the land was to come not from their deceased ancestors, but from the United States.* The title, it is true, was granted to them by reason of the possessory rights of their ancestor, but these were rights which he could not transfer and which passed to them under the statute without any act of his. *On his death his heirs became qualified grantees.* Whether they took immediately on his death or after proof of his compliance with the provisions of the act while in life, need not be decided. It is enough for this case that when their ancestor died he had nothing in the land which he could transmit to them, and that what they afterwards got *came from the United States and not from him.* All his rights in the land were dependent on his completion of the four years' possession; but in consideration of what he had done Congress made his heirs the special objects of its bounty if he died before his

> own grant had been secured. *We attach no importance to the word 'descend,'* as used in this section. In section 4 the word selected to convey substantially the same idea was 'entitled.' The thing done was to give the heirs of a settler the benefit of his rights and to designate them as the recipients of the bounty of the government, instead of him."

The italics in the above and foregoing excerpt are ours. We regard the facts in the case, and the decision by the court, not only as persuasive and analogous to the case now under consideration, but as direct authority for our position that appellants took as original allottees.

In the Original and Supplemental Creek Agreements it was provided that if the citizen enrolled should die before receiving his allotment, then the allotment to which he would have been *entitled,* if living, should *descend* to his heirs, and be allotted and distributed to them accordingly. We can perceive no appreciable difference between these provisions and the provisions of the Oregon Donation Act in respect to the disposition to be made of the lands following the death of the settler. In *Russell* v. *Hall, supra,* it is held that, upon the death of the settler, his heirs became qualified grantees, and that the title acquired by them came from the United States, and not the deceased settler. The words *entitled* and *de-*

scend occur both in the Donation Act and the Creek Agreements, and this court said, in the *Russell-Hall* case, that no importance was to be attached to the word "descend," and that in section 4 the word selected to convey substantially the same idea was "entitled," and that the purpose of the entire act was to give to the heirs of the settler the benefit of his rights, but that the heirs took as grantees of the United States, as the designated recipients of the bounty of the Government, and not of the settler. So, in the present case, it would seem to follow that the heirs of an enrolled citizen took as grantees of the Creek Nation and the United States, as the designated recipients of their bounty, in right of the deceased enrollee, but not of and from him. If no importance was to be attached to the word "descend" in the connection in which it is used in the Oregon Donation Act, then it is difficult to understand how any importance should be attached to it in the Original and Supplemental Creek Agreements.

Respectfully submitted,

JAMES C. DAVIS,
Creek National Attorney.

Office Supreme Court, U. S.
FILED
JAN 20 1920
JAMES D. MAHER,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. [redacted]51

ANNIE HARRIS, FORMERLY ANNIE FRANCIS; AMOS FRANCIS AND ELIZABETH FRANCIS, MINORS, APPEARING BY W. C. FRANKLIN, GUARDIAN AD LITEM, APPELLANTS,

versus

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. LAMB, A. B. MILLER, MAUDE MITCHELL, W. H. HARRIS, L. A. BELL, H. L. LIGHTSEY, JOHN R. TAYLOR, MACK FRANCIS, J. ORLANDO MITCHELL, HOWELL H. BROWN, THOMAS W. DANIEL, LAURA L. McGINNIS, R. C. MARTIN, H. M. KIRKPATRICK, J. S. KIRKPATRICK, JOHN V. McMAHON, A. W. SHULTHIS, E. J. LAMBERT, W. H. WHITFORD, R. L. EBLING, GERTRUDE WOMACK, HARRY F. EAGAN, EUGENE W. GILL, AND THE HOPPY-TOAD OIL & GAS COMPANY, A CORPORATION, APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF ON BEHALF OF APPELLEES.

GEORGE S. RAMSEY,
WILLIAM M. MATTHEWS,
Counsel for Appellees.

INDEX.

Page.

Statement of facts..... 1

Brief and argument..... 5

I. Where a Creek Indian citizen dies before receiving his allotment and thereafter a certificate and patent is issued in his name, such allotment, so far as restrictions are concerned, is governed by section 22 of the act of Congress of April 26, 1906, prescribing restrictions on inherited lands, and not by section 19 of that act, prescribing restrictions against alienation by the allottee..... 5

II. By section five of the act of April 26, 1906, and section 32 of the act of June 25, 1910, Congress declared there was no distinction between inherited lands and lands allotted in the name of deceased Creek citizens..... 17

III. The approval of the deed executed by the appellant Annie Harris to Laura A. McGinnis by the Secretary of the Interior on the sixth day of July, 1910, operated to remove all restrictions and make the deed valid.. 24

IV. Under the act of May 27, 1908, interests of full-blood Creek Indian minors in inherited lands can be sold through the county courts of Oklahoma having jurisdiction of their estates, and approval of guardian's deeds by those courts renders them valid..... 34

V. It was not intended by the act of Congress of May 27, 1908, to prohibit the sale of inherited lands owned by minors enrolled as full-bloods..... 45

VI. The appellants are concluded by the decree of the trial court holding that the Arkansas law of descent controls the devolution of this estate..... 53

Cases Cited.

	Page.
Anchor Oil Company vs. Gray, 257 Fed., 277	27
Chupco vs. Chapman, 170 Pac., 259	35
Lomax vs. Pickering, 145 U. S., 310	25
Lykens vs. McGrath, 184 U. S., 169	26
Morrison vs. Burnette, 154 Fed., 617; 83 C. C. A., 391	44
Mullen vs. The United States, 224 U. S., 4148	13
Perryman vs. Woodward, 228 U. S., 148	22
Scioto Oil Co. vs. O'Hern, 169 Pac., 483	28
Shulthis vs. McDougal, 170 Fed., 528	30
Skelton vs. Dill, 235 U. S., 206	11
State vs. Stoll, 17 Wall., 425	42
Talley vs. Burgess, 246 U. S., 104	13
Tiger vs. Western Investment Co., 221 U. S., 286	18
United States vs. Knight, 206 Fed., 145	30
U. S. vs. Wildcat, 244 U. S., 111	19
Washington vs. Miller, 235 U. S., 422	42

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 186.

ANNIE HARRIS, FORMERLY ANNIE FRANCIS; AMOS FRANCIS AND ELIZABETH FRANCIS, MINORS, APPEARING BY W. C. FRANKLIN, GUARDIAN AD LITEM, APPELLANTS,

versus

HARRY H. BELL, J. A. WOOD, H. R. PIERSON, A. C. BRADY, FRANK F. LAMB, A. B. MILLER, MAUDE MITCHELL, W. H. HARRIS, L. A. BELL, H. L. LIGHTSEY, JOHN R. TAYLOR, MACK FRANCIS, J. ORLANDO MITCHELL, HOWELL H. BROWN, THOMAS W. DANIEL, LAURA L. McGINNIS, R. C. MARTIN, H. M. KIRKPATRICK, J. S. KIRKPATRICK, JOHN V. McMAHON, A. W. SHULTHIS, E. J. LAMBERT, W. H. WHITFORD, R. L. EBLING, GERTRUDE WOMACK, HARRY F. EAGAN, EUGENE W. GILL, AND THE HOPPY-TOAD OIL & GAS COMPANY, A CORPORATION, APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF ON BEHALF OF APPELLEES.

Statement of Facts.

The land in controversy is the allotment of Freeland Francis, a member of the Creek Indian Tribe. Prior to

allotment, it was a part of the public domain of the Creek Nation. It is now located in Okmulgee County, Oklahoma. Before the advent of Statehood, it was within the western judicial district of the Indian Territory.

As disclosed by the agreed statement of facts (Record, pages 116-121), Freeland Francis was born on the 30th day of April, 1903, and died on the 22d day of June, 1905, intestate, unmarried, and without issue. He left surviving him as his sole heirs-at-law his mother, Annie Harris, nee Francis; his brother, Amos Francis; his sister, Elizabeth Francis, and a half-brother, Mack Francis. His name was placed upon the final approved rolls of citizenship of the Creek Nation on the 10th day of June, 1905, which gave him the right to share in the distribution of the lands and funds of the Creek Nation. His allotment, however, was not selected during his lifetime.

Freeland is enrolled as a three-quarter blood Creek Indian. His father, William Francis, who died just two months prior to Freeland, was enrolled as a half-blood; while the mother, Annie Harris; the brother, Amos Francis, and the sister, Elizabeth Francis, are enrolled as full-bloods. The half-brother, Mack Francis, is enrolled as a half-blood. Amos and Elizabeth were, at the time of the filing of this suit and during the transactions hereinafter alluded to, minors under the age of twenty-one and eighteen years, respectively.

On the 4th day of December, 1907, there was selected and allotted in the name of Freeland Francis, by the Commission to the Five Civilized Tribes, the land in controversy, and on the 10th day of December, 1908, patents were executed by the principal chief of the Creek Nation.

On the 15th day of January, 1908, Annie Harris, the complainant below and the appellant herein, executed a deed to the defendant, Laura L. McGinnis, conveying to her the allotment of Freeland Francis, and on the 31st day of December, 1909, this deed was filed in the office of the

United States Indian Agent at Muskogee, together with an application addressed to the Secretary of the Interior, requesting that it be approved. On the 6th day of July, 1910, the Secretary of the Interior endorsed his approval upon the deed and returned it to the United States Indian Agent at Muskogee (Record, page 118). The power and authority of the Secretary to approve this deed is the principal question raised by this appeal.

On the 8th day of January, 1909, the defendant, Laura L. McGinnis, executed to the defendants, H. L. Lightsey and John R. Taylor, a warranty deed to the land in controversy.

On the 10th day of March, 1907, W. J. Cook was appointed guardian of the persons and estates of Amos and Elizabeth Francis by the United States Court for the Western District of Indian Territory, sitting at Muskogee, and when Indian Territory became a part of the State of Oklahoma, on November 16, 1907, these guardianship proceedings were transferred to the County Court of Okmulgee County, and thereafter, in the latter part of 1911, the guardian instituted proceedings in the last-mentioned court to sell the interest of Elizabeth and Amos Francis in this allotment; and, after due and timely notice had been given in accordance with the statutes of Oklahoma, their interest was sold at public sale to H. L. Lightsey and John R. Taylor. The sale was confirmed by the court and the guardian directed to execute deed to the purchasers, which was accordingly done on the 15th day of January, 1912. There is no question about the regularity of the probate proceedings. The only question raised by the appellants, as we understand it, is whether or not the deed *should have also been* approved and confirmed by the County Court of Wagner County, Oklahoma, or the County Court of Muskogee County, Oklahoma.

Mack Francis, the half-brother, upon obtaining his majority, sold his interest to Maude Mitchell, who died on the 17th day of September, 1911, leaving surviving her her

husband, J. Orlando Mitchell, and her daughter, Gertrude Womack. The defendant, Eugene W. Gill, acquired the husband's interest. The trial court held that Mack Francis inherited a one-sixth interest, and that the defendants, Eugene W. Gill and Gertrude Womack, had acquired this interest.

After Lightsey and Taylor had purchased the interests of Annie Harris, Amos and Elizabeth Francis, they executed an oil and gas lease to the defendant, A. W. Shulthis, covering the entire allotment. This lease bears date the 5th day of April, 1913. Shortly thereafter Shulthis entered upon the land and drilled an oil well, which produced oil in paying quantities. At the time of the filing of this suit he had expended in improvements and development work the sum of $38,000.00.

This suit was originally instituted in the District Court of Okmulgee County, Oklahoma, by the mother, Annie Harris. She claimed in her petition to be the sole owner of the land in controversy. The cause was removed to the United States Court for the Eastern District of Oklahoma upon the petition of the defendant Shulthis. W. C. Franklin was appointed guardian *ad litem* for Amos and Elizabeth Francis, and after issues joined the cause was tried on the 26th day of July, 1916. The Court held that upon the death of Freeland Francis and the selection of his allotment, the mother, Annie Harris, became the owner of an undivided one-half interest and that Amos, Mack, and Elizabeth, the brothers and sister, each inherited an undivided one-sixth interest. The Court further held that Lightsey and Taylor acquired a good title to an undivided five-sixths interest through the deeds executed by Annie Harris and the guardian of Amos and Elizabeth Francis, and that A. W. Shulthis was the owner of a valid oil and gas mining lease on this undivided five-sixths interest. None of the defendants except Lightsey and Taylor and their lessee, A. W. Shulthis, Gertrude Womack and Eugene W. Gill were

adjudged to own any interest. The other defendants were enjoined from claiming and asserting any title, and the instruments which they held were canceled and set aside. None of these defendants took an appeal and the decree became final and conclusive as to them. Likewise, there is no appeal from the decree in so far as it fixed and determined the interests owned by the respective parties.

Annie Harris, the mother, and Amos and Elizabeth Francis, the brother and sister, by their guardian *ad litem*, appealed to the United States Circuit Court of Appeals for the Eighth Circuit, where the cause was affirmed.

BRIEF AND ARGUMENT.

I.

Where a Creek Indian citizen dies before receiving his allotment and thereafter a certificate and patent is issued in his name, such allotment, so far as restrictions are concerned, is governed by section 22 of the Act of Congress of April 26, 1906, prescribing restrictions on inherited lands, and not by section 19 of that act, prescribing restrictions against alienation by the allottee.

By the act of June 28, 1898, 30 Stat., 495, Congress directed the Commission to the Five Civilized Tribes to make a roll of the Creek Indians. It was provided that each Indian whose name appeared upon the roll should be entitled to participate in the distribution of the lands and funds of the tribe. Section 4 of that act directed the Commission to "allot the exclusive use and occupancy of the surface of all the lands of said nation" to the citizens whose names appeared upon the rolls. The Commission opened a land office in Muskogee, Indian Territory, on the first day of April, 1899, and to each enrolled member who, on or after

that day, made a selection there was allotted one hundred and sixty acres of land.

By the act of Congress approved March 1, 1901, 31 Stat., 861, commonly known as the Original Creek Agreement, it was provided in section 28, that—

> "All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled under section twenty-one of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An Act for the protection of the people of the Indian Territory, and for other purposes,' shall be placed upon the rolls to be made by said Commission under said act of Congress, and if any such citizen has died since that time, or may hereafter die, before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.
>
> *"All children born to citizens so entitled to enrollment, up to and including the first day of July, nineteen hundred, and then living, shall be placed on the rolls made by said Commission; and if any such child die after said date, the lands and moneys to which it would be entitled, if living shall descend to its heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly."*

By the act of Congress approved June 30, 1902, 32 Stat., 177, commonly known as the Supplemental Creek Agreement, it was provided in section 7, that—

> *"All children born to those citizens who are entitled to enrollment as provided by the act of Congress approved March 1st, 1901, subsequent to July 1st, 1900, and up to and including May 25th, 1901, and living upon the latter date, shall be placed on*

the rolls by said Commission. And if any such child has died since May 25th, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly."

By section 9 of said act it was provided that the names of the children enrolled under the section above quoted "shall be placed upon a supplemental roll of citizens of the Creek Nation, and such supplemental roll, when approved by the Secretary of the Interior, shall in all respects be held to be part of the final rolls of the citizens of said tribe."

By the Indian appropriation act approved March 3, 1905, 33 Stat., 1048, provision was made for the enrollment and allotment of children born subsequent to May 25, 1901, and prior to March 4, 1905, and living on the latter date. The pertinent part of this act reads as follows:

> "That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this act to receive and consider applications for enrollments of children born subsequent to May twenty-five, nineteen hundred and one, and prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Creek Tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act; and to enroll and make allotments to such children."

It was under this act of March 3, 1905, that Freeland Francis was enrolled as a citizen of the Creek Nation and was allotted the one hundred and sixty acre tract of land in controversy. The Commission to the Five Civilized Tribes in compiling this roll, designated it "Creek New-Born" roll. We agree with opposing counsel that this act was amendatory to the supplemental Creek agreement and that Con-

gress intended to extend the period of time during which new-born children of Creek citizens should be enrolled. After giving to each citizen of the Nation a one hundred and sixty acre tract of land, there was considerable surplus remaining on March 3, 1905, and the chief purpose of Congress was to allot and dispose of this surplus.

In the original and supplemental agreements, for the purpose of restriction, lands were divided into two classes: First, "Lands of allottees;" second, "Inherited lands and lands allotted in the name of a deceased member." This division runs through all the acts of Congress, as we shall later show, and there was no intention on the part of the law-making body to make any change in these classes by the act of April 26, 1906. Section 19 of that act deals with the first class and reads as follows:

> "That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any maner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by Act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior: *Provided, however,* That such full-blood Indians of any of said tribes may lease any lands other than homestead for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior; and in case of the inability of any full-blood owner of a homestead, on account of infirmity or age, to work or farm his homestead, the Secretary of the Interior, upon proof of such inability, may authorize the leasing of such homestead under such rules and regulations. *Provided further,* That conveyances heretofore made by members of any of the Five Civilized Tribes subsequent to the selection of allotment and subsequent

to removal of restriction, where patents thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording or delivery of patent or deed; but this shall not be held or construed as affecting the validity or invalidity of any such conveyance, except as hereinabove provided; and every deed executed before, or for the making of which a contract or agreement was entered into before the removal of restrictions, be and the same is hereby, declared void: *Provided further,* That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee."

34 Stat. L., p. 137.

Section 22 deals with the second class, and reads as follows:

"That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the organization of a State or Territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe."

34 Stat. L., p. 137.

Under the original and supplemental agreements, "lands allotted to citizens" could not be alienated for a period of

five years. The second class, "the lands allotted in the name of deceased citizens," and inherited homesteads were free from all restrictions. Congress was particular to keep these two classes separate and distinct. In the act of April 26, 1906, on the first class it imposed a restriction on alienation for a period of twenty-five years and prohibited any conveyance unless the restrictions were removed by act of Congress. All restrictions against heirs were removed as to the second class, with a proviso that if the heir was a full-blood he might sell and convey with the approval of the Secretary of the Interior.

The phrase "lands allotted to citizens" has acquired a fixed and well-defined meaning. In the original Creek agreement, in section 7, it is provided that "*lands allotted to citizens* hereunder shall not in any manner, or at any time, be incumbered, taken or sold * * * and any such lands shall not be alienated by the allottee, or his heirs, at any time before the expiration of five years from the ratification of this agreement."

In section 16 of the supplemental Creek agreement we find the same expression, as follows: "*Lands allotted to citizens* shall not in any manner whatever, or at any time, be incumbered, taken or sold * * * nor be alienated by the allottee, or his heirs, before the expiration of five years from the date of the approval of this supplemental agreement."

In section 19 of the act of April 26, 1906, quoted above, is to be found the same expression as follows: "That no full-blood Indian shall have power to alienate, sell, dispose of, or incumber in any manner *any of the lands allotted to him* for the period of twenty-five years from and after the passage and approval of this act."

In the act of May 27, 1908 (35 Stat. L., 312), and in section 1, it provided that "all *allotted lands of enrolled* full-bloods and enrolled mixed-bloods of three-quarters or more Indian blood, including minors of such degree of blood,

shall not be subject to alienation, contract to sell * * * prior to April 26th, 1931."

Throughout all these acts the expression, "lands allotted to citizens" and "lands allotted to them" (full-blood citizens), has been construed and interpreted by the courts to mean allotments made in the name of living citizens, and not to include those made in the name of deceased citizens.

In Skelton *vs.* Dill, 235 U. S., 206, this Court had before it the allotment made on behalf of Archie Hamby, who was born in February, 1900, and died in July, 1901. He left surviving him, as his heirs at law, his father, mother, and a sister. Some two or three years after his death his name was placed upon the roll of Creek citizens, and some time thereafter, the date not being given in the opinion, the lands in question were allotted and patented to his heirs. In September, 1905, his heirs executed a deed to L. S. Skelton. After the passage of the act of Congress of April 26, 1906, they executed a second deed to M. S. Wilson, who conveyed to the appellee, William H. Dill. It was Skelton's contention that the original and supplemental agreements never imposed any restrictions upon lands of that character; while it was Dill's contention that they did. It was further contended that the restrictions so imposed were removed by section 22 of the act of April 26, 1906, which provides that the death of the allottee shall operate to remove all restrictions, except that where the heirs are full-bloods, in which case the deed shall be approved by the Secretary of the Interior; and the heirs of Archie Hamby not being full-bloods, an approval of their deed was not necessary. The trial court sustained Dill's contention and upon appeal the decree was affirmed. However, the Federal Supreme Court reversed the decision of the Supreme Court of Oklahoma, and held that the original and supplemental agreements never imposed any restrictions upon lands of that character, and upheld the validity of Skelton's deed.

In the opinion, by Mr. Justice Van Devanter, it is said:

> "Whether these restrictions were intended to apply only to allotments made to living citizens in their own right, or to apply as well to allotments made on behalf of deceased members, is the question for decision. The Supreme Court of the State, when passing upon this case, held them applicable to both classes of allotments, but in the later case of Rentie *vs.* McCoy, 35 Okla., 77; 128 Pac., 244, reached the other conclusion, as did also the District Court for the Eastern District of Oklahoma in Reed *vs.* Welty, 197 Fed., 419. We think the better reasoning lies with the view that the restrictions apply only to allotments made to living citizens in their own right. Not only do the provisions of section 16 of the supplemental act lend themselves to that view, but in those sections of both acts which deal with allotments on behalf of deceased persons there is no suggestion of a restriction upon alienation. This difference in legislative treatment doubtless was deliberate, and reflects a corresponding difference in purpose. In Mullen *vs.* United States, 224 U. S., 448; 56 L. Ed., 834; 32 Sup. Ct. Rep., 494, a like question arose under the original and supplemental acts relating to the Choctaw and Chickasaw lands, and we held that the restrictions upon alienation imposed by those acts were applicable to allotments to living members in their own right, but not to allotments on behalf of members then deceased. We do not perceive anything in the acts relating to the Creek lands which calls for a different conclusion."

In the Skelton case, *supra*, it was expressly held that section 7 of the original agreement and section 16 of the supplemental agreement, in imposing five-year restrictions upon "land allotted to citizens" did not apply to nor affect the "lands allotted in the name of those who had died before receiving their allotment." So in the act of April 26, 1906, when it uses the words "lands allotted to him" (full-blood), it must have been used in the same sense in which it was

used in the other acts of Congress, and the same judicial construction applicable to the earlier acts would also apply with equal force to this one. And especially is this true, since there is no inclination on the part of Congress to change the division of the two classes.

In Mullen *vs.* The United States (224 U. S., 4148) it was held that section 22 of the Choctaw and Chickasaw agreement imposed no restrictions upon the lands allotted in the name of the deceased citizens, and that the heirs might sell and convey, regardless of their blood, without the approval of the Secretary of the Interior or any other authority.

In Talley *vs.* Burgess (246 U. S., 104) this Court expressly held that lands of this character fall within section 22 of the act of Congress of April 26, 1906, and not within section 19. That suit involved the allotment of David S. Burgess, a Cherokee Indian citizen, who died without having selected or received his allotment. Nora B. Burgess was appointed administrator of his estate. A minor heir of the deceased, through his guardian, entered into a contract with the plaintiff Talley, by the terms of which he agreed to give Talley one-half of his interest in the allotment in consideration of Talley's performing certain legal services in connection with a contest over it. Talley performed the services agreed upon and brought suit upon the contract. The contract was never approved by the United States court, as provided by section 22 of the act of April 26, 1906. The plaintiff contended that section 22 was not applicable and that the contract, although not approved by the court, was valid. The defendant contended that section 22 was applicable and that the contract was void. The court sustained the contention of the defendant in the following language:

> "It is contended that this section (section 22) applies only to heirs of a deceased Indian whose selection has been made by himself, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which the decedent belonged. But in

> our view Congress, in the passage of No. 22, had in contemplation that Indians duly enrolled and entitled to share in the tribal property and lands might die before receiving the allotment to which he or she was entitled. Congress had made provision in No. 20 of the Cherokee agreement that such land might be allotted in the name of the deceased, and should, with the proportionate share of the other tribal property, descend to the heirs of the one who would have been entitled, if living. It also provided that the selection for a decedent should be made by a duly appointed administrator or executor, or, in default of such selection, the Dawes Commission should designate the land to be allotted. We think minor heirs who thus receive lands are within the meaning and purpose of the statute; as much so as they would have been had the land been selected by the ancestor in his lifetime."

Lands of the class under consideration were unrestricted by the original and supplemental creek agreements. Restrictions were first imposed upon them by section 22 of the act of April 26, 1906. That act imposed upon lands alloted to *living* full-blood allottees restrictions for a period of twenty-five years, and provided that they should not be alienated or sold unless the restrictions were removed by an act of Congress. It would be strange indeed for Congress to take lands allotted to heirs out of the unrestricted class and put them into the *most* restricted class, especially in view of the removal of restrictions against alienation by heirs subject alone to the *one* restriction against full-blood heirs requiring the approval of the Secretary of the Interior. Running through all the legislation with reference to Indian lands, Congress has clearly manifested a purpose to give the Indian some freedom in dealing with lands of this character, in order that he might have some experience in the management of his estate. After dealing with a piece of inherited land, an Indian would certainly be better qualified to deal with his own allotment and would in some measure at least be better

qualified to take upon himself the burdens and duties of citizenship.

The general tendency of Congress in dealing with Indian lands is set forth in an article by Honorable Franklin K. Lane, Secretary of the Interior, in the January, 1915, number of The National Geographic Magazine, in which he says:

> "Yet I am of the opinion that it would be better, far better, to sever all ties between the Indian and the Government, give every man his own and let him go his own way to success or destruction, rather than keep alive in the Indian the belief that he is to remain a ward of the Government. The advocates of sink-or-swim policy may be reckless. The advocates of the almshouse policy are surely doing harm.
> * * *
>
> "It is the judgment of those who know the Indian best, and it is my conclusion, after as intimate a study as practicable of his nature and needs, that we should henceforth make a positive and systematic effort to cast the full burden of independence and responsibility upon an increasing number of the Indians of all tribes."

The construction of section 19 of the act of April 26, 1906, contended for by appellants, would run contrary to the views expressed by the head of the Department which has charge and control of the Indian affairs. Certainly, if Congress and the Department of the Interior had intended to reverse their policy in dealing with the Five Civilized Tribes, by imposing the most drastic restrictions upon lands that had before been unrestricted, it would have given some clear unequivocal utterance to that effect. It would be a strained and unnatural construction of the act to say that it was intended to prohibit the alienation of this class of land except by an act of Congress, although the heir could sell lands he actually inherited from a deceased Indian who got his allotment before death, provided the secretary approved the deed. *There could be no reason for imposing greater restrictions upon*

lands allotted in the name of deceased citizens than upon lands inherited in a technical sense.

The Circuit Court of Appeals reached the conclusion, in rendering its decision in this cause, that Talley *vs.* Burgess, *supra;* Brader *vs.* James, disposed of this contention, expressly holding that this case falls squarely within the rule announced in those cases. In rendering the decision Judge Sanborn (250 Fed., 211) says:

> "The Supreme Court, however, on March 4, 1918, decided, in cases not distinguishable from that here in hand, that full-blood heirs of a deceased enrolled citizen of one of the Five Civilized Tribes, on whose account an allotment was selected after his decease by an administrator or by the Dawes Commission, are subject to the restriction in section 22 of the act of April 26, 1906, to the effect that all conveyances made thereunder by heirs who are full-blood Indians are subject to the approval of the Secretary of the Interior. 34 Stat., 145; Brader *vs.* James, 246 U. S., 88; 38 Sup. Ct., 285; 62 L. Ed., —; Talley *vs.* Burgess, 246 U. S., 104; 38 Sup. Ct., 285; 62 L. Ed., —. And this court has followed that decision. David *vs.* Youngken (filed April 3, 1918), 250 Fed., 208, — C. C. A. —.
>
> "In view of these decisions, the question arises whether or not Annie's deed, made on January 15, 1908, and approved by the Secretary of the Interior on July 6, 1910, constituted a lawful conveyance. Counsel for the appellants insist that it did not: First, because, as they insist, she and the brothers and sisters of Freeland Francis took as allottees, and not as heirs, and she and they were prohibited from alienating their interests in the land by sections 5 and 19 of the act of April 26, 1906, 34 Stat., 138, 144; and, second, because the power of the Secretary to approve her deed under section 22 of that act was revoked by the act of May 27, 1908, 35 Stat., 312, 315, No. 9. But the first contention is inconsistent with the decision of the Supreme Court in Brader *vs.* James, and of this Court in David *vs.* Youngken, cited above. In those cases the Supreme Court and this Court had

before them the question what restrictions were imposed by the act of April 26, 1906, upon the alienation of their lands by full-blood descendants of deceased Indians, in whose names those lands had been selected and allotted after their death, and they called such descendants heirs, and held that the restrictions imposed by section 22 governed their right of alienation."

II.

By section five of the act of April 26, 1906, and section 32 of the act of June 25, 1910, Congress declared there was no distinction between inherited lands and lands allotted in the name of deceased Creek citizens.

Section 5 of the act of April 26, 1906, 34 Stat., 137, reads as follows:

> "That all patents or deeds to allottees in any of the Five Civilized Tribes to be hereafter issued shall issue in the name of the allottee, and if any such allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs, and in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life, and all patents heretofore issued, where the allottee died before the same became effective, shall be given like effect."

This statute is not entirely free from ambiguity, on account of the insertion of a clause dealing with foreign matter between the first and last sentences of the section. Furthermore, it provides for the issuance of patent in the name of deceased "allottee" and seems to contemplate by the use of "allottee" that a selection should have been made during the life of such deceased citizen. Congress, in order to obviate any legal controversy, and in order to remove the matter

from the realm of doubt, passed the act of April 25, 1910, 36 Stat., 863, section 32 of which reads as follows:

> "Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or act of Congress, to a person who had died, or who hereafter dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life."

This statute is both retroactive and prospective in its operation. It applies to all patents and certificates of allotment that have been theretofore issued as well as those that may be thereafter issued. Although the statute was passed after the date of the patent to the allotment in controversy, nevertheless, when read in connection with section 5 of the act of April 26, 1906, it is just as effectual to accomplish the purpose intended by Congress as though it had been passed prior to the date of the patent. It not only declares all patents theretofore issued to be valid, but expressly provides that if a citizen has died before receiving his conveyance the title "shall inure to and become vested in his heirs, devisees and assigns *as if the deed had issued to the deceased grantee during life.*" (Italics ours.) This act makes no reference to allottees and cannot be construed as meaning that its application presupposes an allotment—that is, one who died after making a selection but before the issuance of a patent or deed. Congress intended by this act to explain and make plain section 5 of the act of April 26, 1906. In construing an act of the legislature, subsequent acts may be looked to and read in connection therewith in order to ascertain the intent of the law-making body.

Tiger *vs.* Western Investment Co., 221 U. S., 286.

Section 5 of the act of 1906 provides for the issuance of a patent in the name of an allottee, whether such patent issues

before or after death. It makes the patent effective not only to pass title to the allottee if living, but to pass title to his heirs or his legal assigns if he died before the issuance of patent, and that it should operate just as effectually in one case as in the other.

Under the original and supplemental agreements, where a citizen died before the selection of his allotment was made, the certificate and patent were issued to his heirs. We do not mean to say, however, that the names of the heirs are set out in these instruments. Assuming that the name of the allottee was John Smith, then these instruments would read, "To the heirs of John Smith." It often happened that the certificate of allotment and patent were actually issued to a deceased citizen, and it has generally been held that such certificate and patent conveyed no interest to the heirs in the absence of a statute expressly providing that they should operate to convey title. The Commission to the Five Civilized Tribes, upon receiving information to the effect that a citizen had died prior to the time of the issuance of the patent to him, generally recalled and cancelled the patent and issued a new one to his heirs. But that proved immaterial under opinion in U. S. *vs.* Wildcat, 244 U. S., 111.

It seems entirely plain that Congress intended by these two acts to abolish all distinction between lands inherited in a technical sense and lands allotted in the name of a deceased citizen. It was intended to make this allotment a part of the estate of Freeland Francis, and to have it descend to his heirs as though patent had issued to him during his lifetime. The patent must issue in his name, and when so issued "the title to the lands described therein shall inure to and vest in his heirs." If Congress had stopped with this declaration, the appellants' argument would be more plausible, but when it is further provided that the patent should have the same effect as if "it had issued to the allottee during his life," the last vestige of doubt as to the meaning and purpose of Congress is removed. It is clearly intended to place this class

of lands in the same category with reference to restrictions as lands inherited in a technical sense. This court and the Circuit Court of Appeals for the Eighth Circuit have construed these sections and reached the same conclusions for which we are here contending.

In Shulthis *vs.* McDougal, 170 Fed., 528 (C. C. A., Eighth Circuit), the court held that where lands were allotted in the name of deceased citizens the heirs do not take as original allottees. In discussing the meaning of section 28 of the original Creek agreement, which provides that where a person dies before receiving his allotment "the land and money to which he would be entitled if living shall descend to his heirs and be allotted and distributed to them," the court says:

> "The word 'descend' is, of course, inapplicable to the actual contingency provided for by the statute, because that contingency contemplates the death of the child before he had actually become seised of any interest in the land. The word 'descend' is a word of art, and indicates the transference of property by inheritance. If any significance is to be given to it as used in this section, it must be held that the intent of the parties to the agreement was that the land should pass to the same persons and in the same proportions as it would have passed if the child had died seised of it. Any other construction simply obliterates this word, and makes the land pass to the parties who are heirs directly by allotment from the tribe. The statute itself not only declares that it shall 'descend,' but also declares that it shall be 'allotted and distributed,' to the heirs. It is manifest, therefore, that both ideas were in the minds of the parties to the agreement.
>
> "This construction receives further support by the general scheme which the Federal Government and the Creek Nation formed for the disposition of the tribal property. The first requisite for the partition of the tribal estate in severalty among its members was to ascertain and legally establish who were members of the tribe. By reason of the many intermarriages between members of the tribe and members of the white and negro races, and by reason of the fraud-

ulent claims to membership, the ascertainment of the particular persons who were in fact entitled to such membership proved a much more difficult task than was at first anticipated. The commission was empowered and directed to prepare such a roll. This work not only required much investigation on its part, but resulted in voluminous litigation. Instead of being a work of months, it proved to be a work of years. In the meantime, however, the membership of the tribe was constantly undergoing change by birth and death. In order to provide for all members of the tribe who were born subsequent to the beginning of the enrollment, the date of right to enrollment was twice set forward, the statute last quoted fixing the latest date. By reason of these facts, when the roll was completed, it contained more names than there were members in being. The roll, however, furnished the basis for the division of the tribal estate. Every person whose name was entered on the roll was entitled to an equal proportion of the tribal land and funds; but by reason of the fact that before actual distribution could be made, and even while the enrollment was in progress, some persons whose names were on the roll would die, the statute made provision for the disposition of the share of tribal property which would go to them if living. Such a provision was necessary. Otherwise there would have been a portion of the tribal property undistributed. It was never the intent, however, either of the tribe or of the Federal Government to grant to parties having a kinsman who had died before the actual making of the allotment additional lands as a bounty. These kinsmen got all their right to additional lands under and through the enrolled member who had died. Whether the ancestor was actually seized of the property or not in his lifetime, was immaterial. It was the intent of the statute that the property should pass by the same right and in the same manner that it would have passed if the person enrolled had survived to receive his allotment. The tribe was not bestowing such land as a bounty, but was simply providing for the right of inheritance.

"Congress itself has construed this statute. Section 5 of the act (Act April 26, 1906, c. 1879, 34 Stat., 138) provides

> " 'That all patents or deeds to allottees in any of the Five Civilized Tribes to be hereafter issued, shall issue in the name of the allottee; and if any such allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs; and in case any allottee shall die after the restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life; and all patents heretofore issued where the allottee died before the same became effective, shall be given like effect.'

"Here is an express declaration by Congress that the land shall descend to heirs the same as it would have descended if the patent or deed had issued to the allottee during his life, and it is declared that allotments for allottees who have died shall also thus descend. This interpretation by Congress of its own act leaves no room for doubt as to its intent."

This statute has been construed by the Supreme Court in the case of Perryman *vs.* Woodward, 228 U. S., 148. Squire Saunders had set apart to him by the Creek Nation a lot in the city of Muskogee. Shortly thereafter, on October 22, 1900, he died intestate. The patent was issued on the 26th day of January, 1904, and the question arose as to whether or not that lot, under the above-quoted statute, constituted a part of his estate, or did his heirs take as original purchasers. The court, in holding that they were not original purchasers or allottees, says:

> "The title of the defendant depends upon the effect of a decree of the probate court, made on November 16, 1900, finding that the estate of Squire Saunders did not exceed $300, and ordering and adjudging that

the same do vest absolutely in his widow. If valid, it is decided that this decree embraces the land in controversy. Squire Saunders having the possessory right to the lot, which lay in the town of Muskogee, Creek Nation, Indian Territory, it was awarded to him by the townsite commission. On October 22, 1900, he died intestate. On January 26, 1904, a deed was made by the principal chief of the Muskogee (Creek) Nation, approved by the Secretary of the Interior, purporting to convey the same to him.

"The act of June 25, 1910, chap. 431, 432, 36 Stat. at L., 855, 863, provided that 'where deeds to tribal lands in the Five Civilized Tribes have been or may be issued * * * to a person who had died, or who hereafter dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life.' The intent and meaning of this statute, in our opinion, was to make the patented land part of the estate of the nominal patentee *quoad hoc*—the most important words being *'as if the deed had issued to the deceased grantee during life.'* The section was not intended to exclude other provisions of law otherwise applicable and to give a title at all events to their heirs or other party named in the act as purchaser." (Italics ours.)

The purpose of Congress in enacting the second provision of section 5 is apparent. It provides:

"In case any allottee shall die after restrictions have been removed his property shall descend to his heirs or his assigns as if the patent or deed had issued to the allottee during his lifetime."

This provision was inserted for the purpose of removing any doubt as to whether or not the lands could be alienated before the issuance of patent.

So that instead of this clause of section 5 showing an intent on the part of Congress to impose restrictions on land that had theretofore been unrestricted, it shows the opposite

intent to give a greater freedom in the sale of lands of this class by permitting the heirs to execute deeds without waiting for the formal issuance of patents.

III.

The approval of the deed executed by the appellant Annie Harris to Laura A. McGinnis by the Secretary of the Interior on the sixth day of July, 1910, operated to remove all restrictions and make the deed valid.

The appellant Annie Harris executed a deed to the defendant Laura A. McGinnis on the 15th day of January, 1908, conveying the allotment of Freeland Francis. This deed was subsequently filed in the office of the United States Indian Agent in Muskogee together with a part of the purchase price, accompanied by an application, addressed to the Secretary of the Interior, asking that the deed be approved. On July 6, 1910, the Secretary endorsed his approval upon the deed (Record, page 118).

This appeal is being taken by representatives of the Department of the Interior, presumably under the orders of the Secretary of the Interior. It seems strange that after the Secretary has placed his stamp of approval upon this transaction, and the appellees, relying upon his good faith, have gone upon the premises and drilled six or seven oil and gas wells and expended approximately $40,000.00, that he should now question his own authority and seek to deprive the appellees of the benefit of their bargain. It will be presumed, however, that the Secretary was acting in good faith when he approved the deed and all doubts will be resolved in favor of the validity of the approval.

This deed was executed at a time when the act of April 26, 1906, was in full force and effect and before the passage of the act of May 27, 1908, especially section 9 thereof (35

Stat. at Large, p. 312). Appellants contend that the Secretary of the Interior had the power to approve a deed at any time between the dates of the above-mentioned acts, but that after the enactment of the last-named law, his power to approve conveyances was terminated and the authority theretofore given him was vested in the various county courts. There is grave doubt as to whether the act of May 27, 1908, was a complete substitution of the act of April 26, 1906. That could only be determined by examining all the terms and provisions of both acts. This would entail upon the court an enormous amount of labor. That question is not involved in this appeal and it is unnecessary for either court or counsel to pursue it at length.

Appellees contend that the approval is valid for two reasons: (*a*) The validity of the deed and of the approval must be determined by the law in force at the time of the execution of the deed; and (*b*) it was expressly provided in section 1 of the act of May 27, 1908, that the Secretary should continue to exercise the authority to remove restrictions as he had theretofore exercised.

(*a*) The form of the deed, the right of the grantor to convey, the legal formalities, in fact, the entire validity of the deed is determined by the law in force at the time of its execution. If a deed, valid at the time of its execution, should be placed in escrow and before its delivery an act should be passed declaring instruments of that character void, such act would not affect it, because, upon delivery, the doctrine of relation would apply and the deed would become a valid instrument from the date of its execution. So in this case the approval by the Secretary of the Interior related back to the date on which the deed was executed and made it valid from that date. It has been expressly so held by this Court in two cases: In Lomax *vs.* Pickering (145 U. S., 310) the land involved was patented to Alexander Robinson, a member of one of the Indian tribes, and his

children, under the Treaty of Prairie Du Chien, which prohibited alienation of the lands except with approval of the President of the United States. Thereafter, on the third day of August, 1858, the patentee, joined by his wife, executed a deed to John F. Horton. This deed was not approved by the President of the United States until January 21, 1871, thirteen years after its execution. In the meantime Horton had died. This Court held the approval valid, and further held that the lapse of time did not affect the power of the President to approve. The doctrine of relation was applied to the transaction and the act of approval became effective from the date of the execution of the deed. In discussing the doctrine of relation, it was held that the "ratification operates upon the act ratified precisely as though authority to do the act had been previously given." To be sure, if the doctrine of relation is applied, the fact that the grantee had died between the date of the deed and the date of its approval could not affect its validity. On this point the Court said:

> "Nor do we consider it material that the grantee had in the meantime died, since if the ratification be retroactive, it is as if it were indorsed upon the deed when given, and enures to the benefit of the grantee of Horton, the original grantee—not as a new title acquired by a warrantor subsequent to his deed enures to the benefit of the grantee, but as a deed imperfect when executed, may be made perfect as of the date when it was delivered."

In Lykens *vs.* McGrath (184 U. S., 169), the land involved was patented to David Lykens, an Indian. Under a provision of a treaty between his tribe and the United States, he was prohibited from alienating except with the approval of the Secretary of the Interior. On June 3, 1864, he executed a deed to Baptiste Peoria, which was shortly thereafter presented to the Secretary for approval. Before the Secretary acted upon the application, the grantor died and ap-

proval was endorsed upon the deed after his death. It was contended that the death of the grantor before the approval of the deed rendered it null. The Court, however, again applied the doctrine of relation and held that the Secretary's approval related back to the date of the instrument and it became valid from the date of its execution.

This identical question was before the Circuit Court of Appeals for the Eighth Circuit in Anchor Oil Company *vs.* Gray (257 Fed., 277). The land involved was the allotment of Jennie Samuels, a full-blood Creek Indian, who executed an oil and gas mining lease on December 5, 1914, to the defendant, W. H. Gray. After the lease had been submitted to the Secretary of the Interior, but before its approval by him, the lessor died. The Secretary of the Interior endorsed his approval upon the lease on October 21, 1915. After the death of the original allottee, her heirs executed oil and gas leases to the plaintiff, Anchor Oil Company, which were approved by the county court having jurisdiction of the estate of the deceased. It was the contention of the appellant that the death of the allottee divested the Secretary of the Interior of any power to approve any instrument affecting the title to the land because the act of May 27, 1908, expressly conferred upon the county courts of Oklahoma power to approve instruments of that character. Section 9 of that act expressly provided that the death of an allottee shall operate to remove all restrictions upon the alienation of his allotment, with a proviso that where the heirs are full-bloods, the deeds must be approved by the courts having jurisdiction of their estates. The Circuit Court of Appeals, in holding lease executed by Jennie Samuels during her lifetime, and the approval of the Secretary of the Interior, valid, said:

> "But where the validity of a convayence of land or of leases thereof is conditioned by the approval of different officers or by different restrictions at different times, the law in force at the time of the deed or lease

determines the restriction upon its validity, and where at that date a specified officer is empowered to approve and validate it, that officer, or his successor in office, may lawfully do so after subsequent legislation has conditioned the validity of like conveyances or leases with the approval of a different officer or with different restrictions, and the true construction of section 9 of the act of May 27, 1908, is that it is prospective and not retrospective in effect, that it applies to conveyances and leases made after its passage and is inapplicable to those made before its enactment, and that the Secretary of the Interior had plenary authority to approve and validate the lease of Jennie Samuels after her death notwithstanding the provision of section 9 of the act of May 27, 1908. Scioto Oil Co. *vs.* O'Hern (Okl.), 169 Pac., 483; Harris *vs.* Bell, and authorities cited in 250 Fed., at page 214, 162 C. C. A., 345.

"Counsel insist, however, that the Secretary's power to approve the lease ceased because under section 9 of the act of 1908 the death of the lessor removed all restrictions upon alienation of the land. But that removal did not change the status of Jennie Samuels' lease, did not remove the restriction upon the alienation by her, for those restrictions persisted until she died, and she could not alienate her land after her death. She had leased her land, subject only to the approval of the Secretary, and her heirs, so far as her lease was concerned, stepped into her shoes upon her death. The lease estopped them, as it did her, from revoking it or conveying the land free from it, unless the Secretary, in the exercise of his judicial discretion, refused to approve it, and, when he approved it, the estoppel became absolute upon all of them alike."

A similar question arose in the case of Scioto Oil Co. *vs.* O'Hern, 169 Pac., 483 (Okl., not yet officially reported). Albert Cooper, a full-blood citizen of the Creek Nation, executed an oil and gas lease covering his allotment on August 16, 1912, to John M. Ingram which was transmitted to the Secretary of the Interior for his approval. Cooper died before the Secretary had acted. After the death of the allottee

the lease was duly approved and was subsequently assigned to the Scioto Oil Company, who entered into possession of the land and began operations for the purpose of extracting the oil and gas thereunder. Before the Secretary approved the oil lease, the heirs of Cooper executed deeds to O'Hern, which were duly approved by the courts having jurisdiction over the settlement of the estate. The Supreme Court of Oklahoma, in holding the lease and approval of the Secretary of the Interior valid, says:

> "The contract is not assailed on any of the grounds which usually render contracts invalid, but solely upon the ground that prior to the approval thereof by the Secretary one of the parties had died, and that the Secretary's power or authority to approve the same had lapsed, because the death of the allottee operated to remove the restrictions against the alienation thereof under section 9, act Congress May 27, 1908, c. 199, 35 Stat., 315. This contention cannot be sustained.
>
> "In Almeda Oil Co. *vs.* Kelley, *supra*, a lease had been executed and submitted to the Secretary for his approval, and prior to the approval thereof the restrictions of the allottee had been removed, and he thereafter changed his mind and desired to withdraw from said lease, but same was afterward approved by the Secretary. It was contended that because restrictions against the alienation of said land had been removed the Secretary had no right to approve the lease over his protest and objection. This contention, however, was denied, and it was held in accordance with what we have already stated that the contract only needed the approval of the Secretary to be valid in every particular, and that the approval of the Secretary related back to its execution and rendered it valid from that time, and it was further held that, if the removal of restrictions upon the allottee's complete right to lease would have any effect whatever, it would be to render the contract of the parties complete, to be annulled only on or for some of the grounds under which equity gives relief.

* * * The purpose of requiring the lease to be approved by the Secretary was to see that the allottee should not be wronged in any lease he might desire to make, and that the consideration should be ample, and that the lease be subject to no unreasonable qualifications. It was not to prevent the leasing of the premises, but to guard against imposition therein, and when the Secretary approved the lease it was a determination that the purposes for which the restriction was imposed had been fully satisfied, that the consideration was ample, and that there were no unreasonable stipulations contained in the contract. When this was accomplished, justice requires that the lease should be upheld, and to that end the doctrine of relation attaches to the approval of the lease and makes it operative as of the date of the execution thereof. The situation is very much like that where a deed has been fully executed and placed in escrow to be finally delivered on performance of a condition, and the brothers and their grantees who took with the notice imparted, under the act of March 1, 1907, by the filing of the lease in the office of the Indian Agent, Union Agency, Muskogee, acquired no equities superior to those of the lessee and his assignee. The brothers were heirs of the allottee, and took all of the title which he had at his death, but when the Secretary approved the lease their claims as heirs cannot be compared in equity with those of the lessee. They are not in the attitude of *bona fide* purchasers, and the doctrine of relation intervenes and makes the approval by the Secretary retroactive and effective as of the date of the lease, and, as the brothers and their grantee have no equitable rights superior to those of the lessee, it follows that the lease must be upheld."

United States *vs.* Knight, 206 Fed., 145 (C. C. A., 8th Cir.) expressly holds that the deed is valid if approved in accordance with the law in force at the date of the deed. The facts of that case, briefly stated, are these: The land in controversy had been allotted and patented to Darkey Stop,

a full-blood Indian, who died November 11th, 1906, leaving as his sole surviving heir at law his daughter, Caniyah Stop. On October 12th, 1908, Caniyah Stop executed and delivered a deed to Morris F. Knight and Cyrus S. Avery, the appellees. This deed was approved by the county court having jurisdiction of the settlement of the estate of Darkey Stop. The question before the court was as to whether the approval by the county court was valid, or whether it should have been approved by the Secretary of the Interior.

In rendering the opinion the court says:

> "And as it cannot be claimed or pretended that the death of the allottee in anywise affected the requirement of approval, either by the Secretary of the Interior or by the county court in Oklahoma having jurisdiction over the settlement of the estate of the deceased allottee, it is clear that the decision of the question involved in this case simply requires us to determine as to what law, in regard to the approval of the deed of the Indian heir, was in force at the time Caniyah Stop executed and delivered the deed in question to Knight and Avery. There ought not to be, and we do not believe there is, any doubt about this. Prior to the passage of the law of April 26, 1906 (section 22), full-blood Indian heirs, being members of any of the Five Civilized Tribes in Oklahoma, could not convey their allotted lands unless there had been actual removal of restrictions by the Secretary of the Interior prior to the conveyance. On and after the above last-mentioned date down to the passage of the law of May 27, 1908 (section 9), conveyances by full-blood Indian heirs were valid if subsequently approved by the Secretary of the Interior. After the passage of the law of May 27, 1908, the last expression of the will of Congress as to how such deeds should be approved is found in section 9 hereinbefore quoted, and that law was complied with in regard to the deed of Caniyah Stop. * * *
>
> "We therefore conclude that, as the death of the allottee in no wise affects the requirements as to approval, the deeds of Indian heirs must be approved

in accordance with the law in force at the date of the deed."

If the decisions of the Circuit Court of Appeals of the Eighth Circuit and the Supreme Court of Oklahoma, holding that the law in force at the time of the execution of the deed is the one which determines not only the validity of the instrument but the power of the officer to ratify them, the approval of the Secretary of the Interior, endorsed upon the deed executed by the appellant, Annie Harris, related back to the date of the deed and rendered it valid from that time.

(*b*) In the absence of any legislation, the Secretary of the Interior had authority to approve the deed in question, but in order to eliminate all controversy and remove all doubt, Congress expressly provided in the act of May 27, 1908, that the Secretary of the Interior should not be prohibited from exercising the same authority in the approval of deeds that he had theretofore exercised. Section 9 of that act reads as follows:

> "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee. * * *"

In section 1 of the same act it is also provided that

> "The Secretary of the Interior shall not be prohibited by this act from continuing to remove restrictions as heretofore, and nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this act."
>
> 35 Stat., 312.

Under this act the Secretary of the Interior was given the same power and authority to remove restrictions and approve deeds on Indian lands which had been given him under any prior law or act of Congress. It is therefore necessary to ascertain whether or not any act of Congress passed before May 27, 1908, gave the Secretary of the Interior the power to approve a deed of this character. Under the act of April 21, 1904, 33 Stat., 204, the Secretary was given the power to remove all the restrictions on the alienation of any lands of allottees of either of the Five Civilized Tribes of Indians under such rules and regulations as he might prescribe. The act of April 26, 1906, section 22, provides that the adult heirs of any deceased Indian of either of the Five Civilized Tribes, whose selection has been made or to whom deed or patent has been issued, can sell and convey the land inherited from such deceased. That section, however, contains this proviso: "All conveyances made under this provision by heirs who are full-blood Indians, are to be subject to the approval of the Secretary of the Interior under such rules and regulations as he may prescribe." This deed falls square within the class of lands dealt with in this proviso, and had no subsequent legislation been enacted, the power of the Secretary to approve a deed of this character could not have been questioned. The only other legislation dealing with inherited lands of full-blood Indians is the act of May 27, 1908, and by that act it is expressly provided that the Secretary of the Interior shall continue to exercise the same authority in the removal of restrictions as he had theretofore exercised. The purpose of Congress seems clear, therefore, to grant him the same power in the removal of restrictions under the act of 1908 which he had exercised under the act of 1906.

IV.

Under the act of May 27, 1908, interests of full-blood Creek Indian minors in inherited lands can be sold through the county courts of Oklahoma having jurisdiction of their estates, and approval of guardian's deeds by those courts renders them valid.

The appellees, Lightsey and Taylor, not only obtained a conveyance of the interest of Annie Harris, the mother, in the allotment of Freeland Francis, but also purchased at a sale made through the Probate Court of Okmulgee County, the interest of Amos Francis and Elizabeth Francis, the brother and sister of Freeland Francis. This deed was regularly approved and confirmed by the County Court of Okmulgee County. It is not controverted that this court had jurisdiction both of the persons and estates of these minors.

The deed from Annie Harris to Lightsey and Taylor was executed at a time when the act of April 26, 1906, was in force and it is our contention that the terms and provisions of that act governed the validity of that deed as well as the authority and power of the Secretary of the Interior to approve it. The guardian's deed, on the other hand, was executed on the 15th day of January, 1912, at a time when the act of May 27, 1908, was in force and it is appellees' contention that the terms and provisions of that act govern and determine its validity. Under the last-mentioned act it was not necessary for the minor heirs to join in a deed executed by the adult heirs, but the guardian has authority to execute separate conveyances to the interests owned by his ward. Had this guardian's deed been executed at a time when the act of April 26, 1906, was operative, there might have been some ground for the contention made by the appellants on page 51 of their brief. In other words, the act of April

26, 1906, provides that the interest of minors in inherited lands may be sold by their guardian joining in the same with the adult heirs, but the act of May 27, 1908, makes no such requirement, and in giving the county courts of Oklahoma unlimited jurisdiction of the estates of these minors it excludes any intention on the part of Congress requiring the adults and guardians of minors to join in the same deed.

The guardian's deed was approved and confirmed by the County Court of Okmulgee County on the 15th day of January, 1912. The order of confirmation reads as follows (pages 159B and 159C printed record):

> "That said sale was made after due notice as prescribed by said order of sale; that said purchaser was the highest bidder therefor, and said sum the highest and best sum bid; that said sale was legally made and fairly conducted; that said sum is not disproportionate to the value of the property sold, and that a sum exceeding such bid at least ten per cent exclusive of the expense of a new sale cannot be obtained, and that the said Wm. J. Cook in all things proceeded and conducted and managed such sale as required by the statute in such case made and provided, and as by said order of sale required and directed.
>
> "It is therefore ordered, adjudged and directed by the court, that the said sale, be and the same is hereby confirmed and declared valid, and the said Wm. J. Cook is directed to execute to said purchaser proper and legal conveyance of said real estate."

It is appellees' contention that this order constitutes sufficient compliance with the act of May 27, 1908, and that any further act on the part of the County Court of Okmulgee, or of any other county court in the State of Oklahoma, would have been useless.

In Chupco *vs.* Chapman, 170 Pac., 259, the Supreme Court of Oklahoma held that the order of confirmation was a sufficient approval of a guardian's deed conveying inherited

lands of a full-blood Indian minor. The court, in that opinion, says:

> "It is next urged, that, even though it be held that the probate court of Hughes County had jurisdiction to order and confirm the sale of the inherited interests of the minor plaintiffs in the allotments of Katie and Amos Chupco, said guardian's deeds were invalid, because not approved by the court having jurisdiction of the settlement of the estate of the deceased allottee. In other words, counsel says that, in addition to confirming the guardian's sale and directing the guardian to execute a deed in pursuance thereof, it was necessary that the guardian's deed be approved in a separate proceeding by the county court. We do not think there is any merit in this contention. The statute provides:
>
> " 'That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee.' "

Appellants do not contend that there is any irregularity in the probate proceedings leading up to the execution of the guardian's deed, by which the interests of the appellants, Amos Francis and Elizabeth Francis, were conveyed to the appellees, Lightsey and Taylor. The sale was had in all respects as provided by the laws of the State of Oklahoma. It is their contention that by the act of May 27, 1908, Congress prohibited the sale of the land in controversy, except with the approval of the court having jurisdiction of the estate of the deceased allottee; and that that act was not complied with in that the deceased died before Oklahoma became a State, in what is now Wagoner County, and that the guardian's deed was approved by the County Court of Okmulgee County.

On the other hand, it is our contention: *First,* that the administrator, having been appointed before statehood, by the territorial court, and the County Court of Okmulgee County having been made its successor, it was the proper court to

approve this deed; *second,* that section 9 of the act of May 27, 1908, must be read in connection with other provisions of that act, and that courts having jurisdiction of the estates of deceased full-bloods must approve the deeds executed by their full-blood heirs, *except in cases where jurisdiction is given to some other court by that act.*

It is not necessary to enter into the details of the creation and organization of the territorial courts in the Indian Territory. Suffice to say by the act of May 2, 1890, Congress created a court of general jurisdiction for the Indian Territory and adopted and put in force the probate and civil codes of procedure from the State of Arkansas. The business of this court became so congested that it was necessary to create additional courts, and by the act of Congress of February 27, 1902, the Indian Territory was divided into four judicial districts, the Northern, the Southern, the Central, and the Western.

Section 8 of that act provided that the Creek Nation and Seminole Nation, together with a small part of the Cherokee and Choctaw Nations, should constitute the Western Judicial District. It was also provided by that same act that terms of court should be held at Okmulgee, Muskogee, Wagoner, etc. There was a large amount of business pending in this court in the year 1907, and section 19 of the Enabling Act (34 St. L., 267) passed by Congress on June 16, 1906, provided that the courts of original jurisdiction, created by the State, should be deemed to be the *successors* of the courts of original jurisdiction of the Territory.

Section 19 reads as follows:

> "That the courts of original jurisdiction of such State shall be deemed to be the successors of all courts of original jurisdiction of said Territories, and as such shall take and retain custody of all records, dockets, journals, and files of such courts, except in causes transferred therefrom, as herein provided; * * *."

In section 20 it is provided:

> "That all causes, proceedings, and matters, civil or criminal, pending in the District Courts of Oklahoma Territory, or in the United States courts in the Indian Territory, at the time said Territories become a State, not transferred to the United States Circuit or District Courts in the State of Oklahoma, shall be proceeded with, held and determined by the courts of said State the successors of said District Courts of the Territory of Oklahoma, and the United States courts in the Indian Territory; * * *."

Provision was duly made, by sections 23 and 27 of the Schedule of the Constitution of the State of Oklahoma, for transferring the records and files of the United States courts to their successors created by the State Constitution. The Indian Territory and Oklahoma Territory were created into a State on November 16, 1907. On that day the United States court for the Western District of Indian Territory passed out of existence, and was succeeded by the county and district courts of the various counties carved out of the territory formerly comprising the Western Judicial District. Wagoner, Muskogee, and Okmulgee Counties were all created out of this judicial district.

Freeland Francis died before statehood in the Western Judicial District of the Indian Territory within the present confines of Wagoner County. An administrator of his estate was appointed by the United States court for that district at Muskogee on the 25th day of March, 1907. These proceedings were transferred upon the advent of statehood to the County Court of Muskogee County.

On the 10th day of March, 1907, W. J. Cook was appointed guardian of the persons and estates of Amos Francis and Elizabeth Francis by the United States court for the Western District. These proceedings were subsequently transferred to the County Court of Okmulgee County because the minors resided in Okmulgee County at the time

Oklahoma became a State, and the constitution required guardianship matters to be transferred to the county of the minor's residence.

Now, the County Court of Muskogee County was no more the successor of the United States court than the County Court of Okmulgee County. The same can be said of the County Court of Wagoner County. All three of these courts, which are courts of general jurisdiction as to probate matters, are, by express provision of the act of Congress, declared to be the successors of the United States court for the Western District of Indian Territory.

Freeland Francis did not die in Wagoner County, because Wagoner County had not been created at the time of his death. He died in the Western Judicial District of the Indian Territory, and the court of that district had jurisdiction of his estate. The County Court of Okmulgee County, being the successor of that court, had just as much authority to approve a conveyance under the act of May 27, 1908, as did the United States court for the Western District of Indian Territory. The act provides that upon the sale of inherited restricted lands that "no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee," and the United States court for the Western District of Indian Territory had the original jurisdiction. There is no question but that the County Court of Okmulgee County is one of its successors in probate matters, and the conclusion is unassailable that it had the power to approve the deed executed by the guardian of these minors.

There is yet another ground on which the approval by the County Court of Okmulgee County must be upheld: The various sections of the act of Congress of May 27, 1908, conferring jurisdiction upon the probate or county courts of Oklahoma are as follows:

Section 6 provides:

> "That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma, * * *."

In section 2 it is also provided:

> "That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents, * * * shall include all males under twenty-one years and all females under the age of eighteen years."

Section 9 of the said act reads as follows:

> "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon alienation of said allottee's land: *Provided,* That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: * * *."

Section 2 does not provide that the county courts shall have jurisdiction over the estates of minors, but it is over the "lands of minors." Now, upon the death of Freeland Francis and the selection of his allotment, the title to this land vested in the appellants and Mack Francis. As soon as title vested in Amos Francis and Elizabeth Francis the County Court of Okmulgee County acquired jurisdiction over this land. No other court could approve a sale without its consent, becuase it had control over the property of these minors and had authority to determine when their land should, or should not, be sold; and, furthermore, had the right to say what was a fair consideration and what was not. This power had been expressly conferred upon it by Congress.

On the other hand, section 9 provides that no conveyance of any interest of any full-blood Indian heir shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee. If that proviso is held to include the interests of minors, as well as adults, it would not only prevent the alienation of any minor's interest, unless the probate court having jurisdiction of the estate of the deceased allottee should also *happen* to have jurisdiction of the estate of the minor heirs, but it would also in practice nullify section 6, because the county court having jurisdiction of the inherited estates of full-blood minors could not exercise authority and control over them if another probate court had the power to approve or disapprove a conveyance executed by a guardian of such minor.

Section 9 and section 6 must therefore be read together. It was immaterial to Congress what probate court confirmed the sale of a minor's interest. Its purpose was to prevent the conveyance of any interest by a full-blood Indian, whether adult or minor, unless some probate court approved the transaction. If the proviso of section 9 be held to apply only to adult full-bloods, so that the probate court of the county having jurisdiction of the estates of deceased allottees would have authority to approve conveyances executed by adults, it would make the act harmonious, and section 6, giving to the probate courts jurisdiction of the estates of minors, would also be effective for that purpose. In other words, the courts designated by the proviso of section 9 would have jurisdiction to approve deeds executed by adult full-bloods, while the probate courts designated by section 6 would have authority to approve and confirm sales of interests of minor full-bloods made by their guardian.

So that the proviso of section 9 should read:

> "No conveyance of any interest of a full-blood Indian heir * * * shall be valid unless approved

> by the court having jurisdiction of the estate of said deceased allottee" (except in those cases where jurisdiction has been conferred upon some other court by this act).

This does not violate any rule of statutory construction; but, on the other hand, it is the duty of the court to harmonize all the various sections of the act, so as to give full force and effect to each, if possible.

Sections 2 and 6 of the act of May 27, 1908, giving probate courts jurisdiction over the person and property of minors is specific legislation relating to a particular class and it is a general rule that legislation of that character is not affected by general legislation in regard to many classes or subjects unless it clearly appears that the general provisions are so repugnant to the special that the legislators must be presumed to have intended thereby to modify or repeal it. The special and general legislation must stand and be read together, the former governing as to the particular class and the latter as to the general law upon other subjects or classes.

State *vs.* Stoll, 17 Wall., 425.

Washington *vs.* Miller, 235 U. S., 422.

The last-mentioned case passes upon the question as to whether or not the special legislation found in section 6 of the Supplemental Agreement, prohibiting non-citizens from inheriting, was repealed by the act of Congress of April 28, 1904, and in holding that it was not, this court says:

> "It next is insisted that the two provisos were repealed by a provision in the act of April 28, 1904 (33 Stat. at L., 573, chap. 1824), reading as follows:
>
> "'All laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation so as to embrace all persons and estates in said Territory, whether Indian, freedmen, or otherwise * * *.'
>
> "No repealing clause accompanied this provision, so the question is, Did it repeal the provisos by im-

plication? There is no doubt that, if taken literally, it would subject the Creek lands to the Arkansas law of descent and distribution without any qualification or restriction. But this would be only by reason of the generality of its terms, for it made no mention of that law or of these lands. In short, it was plainly a general statute, and did not show that the attention of Congress was then particularly directed to the descent of the lands of the Creeks. On the other hand, section 6 of the Supplemental Agreement and its two provisos dealt with that subject in specific and positive terms, which made it certain that the Creeks and their lands were particularly in mind at the time. In these circumstances we think there was no implied repeal, and for these reasons: *First*, such repeals are not favored, and usually occur only where there is such an irreconcilable conflict between an earlier and a later statute that effect reasonably cannot be given to both (*United States vs. Healey*, 160 U. S., 136, 146; 40 L. Ed., 369; 16 Sup. Ct. Rep., 247; *United States vs. Greathouse*, 166 U. S., 601, 605; 41 L. Ed., 1130; 17 Sup. Ct. Rep., 701); *second*, where there are two statutes upon the same subject, the earlier being special and the later general, the presumption is, in the absence of an express repeal, or an absolute incompatibility, that the special is intended to remain in force as an exception to the general (*Townsend vs. Little*, 109 U. S., 504, 512; 27 L. Ed., 1012, 1015; 3 Sup. Ct. Rep., 357; *Ex parte Crow Dog* (*Ex parte Kaug Gi-Shin-Ca*), 109 U. S., 556, 570; 27 L. Ed., 1030, 1035; 3 Sup. Ct. Rep., 396; *Rogers vs. United States*, 185 U. S., 83, 87-89; 46 L. Ed., 816, 818-819; 22 Sup. Ct. Rep., 582); and, *third*, there was in this instance no irreconcilable conflict or absolute incompatibility, for both statutes could be given reasonable operation if the presumption just named were recognized.

"No doubt there was a purpose to extend the operation of the Arkansas laws in various ways, but we think it was not intended that they should supersede or displace special statutory provisions enacted by Congress with particular regard for the Indians, whose affairs were peculiarly within its control."

In Morrison *vs.* Burnette, 154 Fed., 617; 83 C. C. A., 391, a question similar to the one here presented was before the United States Circuit Court of Appeals for the Eighth Circuit. It was there contended that an oil and gas lease sold at guardian's sale through the United States Court for the Western District of Indian Territory, after being confirmed and approved by that court, had to be approved by the Secretary of the Interior. Under the Supplemental Creek Agreement, the Secretary of the Interior had been given full power to approve leases on the allotments of Creek Indians. By the act of July 28, 1904, Congress enacted that "full and complete jurisdiction is hereby conferred upon the district courts in said Territory (Indian Territory) in the settlement of estates of decedents, the guardians of minors or incompetents, whether Indian, freedman, or otherwise." 33 Stat., 573. In holding that the confirmation by the court was sufficient and the approval of the Secretary of the Interior unnecessary, the Circuit Court of Appeals say:

> "In the light of the legislation to which reference has now been made there are two conclusive answers to the argument that the order avoiding the sale and the lease to the appellants was not a final order. In the first place the acts of April 28, 1904, and April 26, 1906, conferred 'full and complete jurisdiction' of the guardianship of minors, whether Indians, freedmen, or otherwise, and of the rental or lease of their allotments, upon the trial courts of the Indian Territory, and the later act repealed all acts and parts of acts inconsistent therewith. The provision of the act of June 30, 1902, that leases for mineral purposes might not be made without the approval of the Secretary of the Interior, is inconsistent with the grants of these later acts. There can be no full and complete jurisdiction of the guardianship of minor Indians and of the leasing of their allotments in a court whose judgments are reviewable and reversible by an officer of another department of the Government. Leases of allotments of Indian minors approved by the trial courts of the Indian Territory after April

26, 1906, were therefore not subject to approval or disapproval by the Secretary of the Interior. Those courts had full and complete jurisdiction to sell the leases and to finally approve and confirm the sales and the leases. The lease to the appellants is in this category. It was approved and the sale of it confirmed on June 11, 1906, and the order which approved it was therefore a final order."

The contention made in that case was similar to the contention made here. There it was contended that the lease must be approved by both the court having jurisdiction of the estates of the minors and the Secretary of the Interior. Here it is contended that the deed must be approved not only by the court having jurisdiction of the estates of the minors, but also by the court having jurisdiction of the settlement of the estate of the deceased, a court of co-ordinate jurisdiction and of equal rank. Certainly Congress could not have intended such an absurd and expensive procedure

V.

It was not intended by the act of Congress of May 27, 1908, to prohibit the sale of inherited lands owned by minors enrolled as full-bloods.

The act of May 27, 1908, is a comprehensive one. Prior to that time members of the Five Civilized Tribes had been divided into two general classes: full-bloods and mixed-bloods. This act, however, not only extends certain restrictions upon full-bloods, but also distinguishes those of less than half Indian blood from those of more than half Indian blood. Three classes of minors' allotments are dealt with:

1—Restricted allotments of *living* minors,
2—Unrestricted allotments of living minors,
3—Lands inherited by minors.

By section 1 of that act the allotments, including both surplus and homestead, of those minors enrolled as full-bloods and those enrolled as three-quarter-bloods, or more, were restricted for a period ending April 26, 1931. These, of course, follow within division one which we have designated as "restricted allotments of living minors."

The act further provides that the allotments of living minors who are enrolled as less than half-blood shall be free from all restrictions. Special provisions are made for the homesteads of minors who are enrolled as half-bloods and less than three-quarter-bloods. These fall within class two, designated as "unrestricted allotments of living minors." Section 6 reads as follows:

> "That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma. * * * *Provided,* that no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of the court, or otherwise."

Section 9 of this act provides that the death of an allottee shall operate to remove all restrictions, but contains the proviso that where the heirs of the deceased are enrolled as full-bloods, the conveyance must be approved by the county court having jurisdiction of the settlement of the estate of the deceased.

There is no question about the intention of Congress to give to the county courts of Oklahoma complete jurisdiction over the persons and estates of Indian minors. It intended to give these courts plenary power to deal with these estates except those minors falling within class 1. They have authority to sell all lands owned by minors except restricted allotments of "living minors." The act does not say that no "restricted lands of minors" shall be sold; the prohibition only extends to *restricted lands of living minors.* Congress

had some purpose in inserting the qualifying phrase "living minors." The words "lands of living" minors are used in an opposite sense to the words "inherited lands." By implication at least, authority is given the county courts to sell and dispose of restricted inherited lands. In other words, jurisdiction of the county courts of Oklahoma extends to the persons and estates of all Indian minors. That jurisdiction, however, is qualified in so far as the lands falling within class one are concerned, which we have designated as the restricted allotments of living minors. On lands falling within classes two and three, the jurisdiction of the courts to sell is unlimited. These classes include unrestricted lands of living minors and all inherited lands. This is the conclusion reached by the Supreme Court of Oklahoma in the case of Chupco *vs.* Chapman, 170 Pac., 259. That case involved the title to the allotments of Amos Chupco and Katie Chupco, both of whom died in the present confines of Hughes County prior to the advent of Statehood. Katie died on April 26, 1900, and Amos in September, 1907. They were enrolled as full-blood Indians. They left surviving them minor heirs who were also enrolled as full-blood Indians. A guardian was appointed by the county court of Hughes County for these minor heirs, and subsequently the interests of such minors were sold under proper orders of the county court to the defendant, James A. Chapman, and guardian's deeds were duly executed. This suit was brought to set aside these deeds on the ground that the lands were restricted within the meaning of the proviso of section 6. The Court reached the conclusion that lands of this character did not follow within the proviso, and held that the guardian's deeds were valid. This is in accord with the general interpretation placed upon this act by the bar of Oklahoma. The court, in rendering its opinion, says:

> "What did Congress mean when it inserted the proviso 'that no restricted lands of living minors shall be sold or incumbered, except by leases authorized by

law, by order of the court or otherwise'? The recognized function or office of a proviso and a saving clause is the same; that is, to except some particular case from a general principle where from peculiar circumstances attending the case there would be some hardship if it were not excepted, to qualify, restrain, or otherwise modify the general language of an enacting clause, or to exclude some possible ground of misinterpretation that might exist if cases which the Legislature did not mean to include were brought within the statute. Endlich on Interpretation of Statutes. * * *

"Generally a proviso should be construed with reference to the immediately preceding parts of the clause to which it is attached, but where it clearly appears from the context that such was not the intention of the Legislature, it will not be done, but a broader meaning will be given it, in order to give it the effect intended by the enacting body. The proviso under consideration is immediately preceded by language making an appropriation for salaries and expenses for representatives of the Secretary of the Interior, authorized by the act to inquire into and investigate the conduct of guardians and curators, etc., and from the very context it clearly does not qualify that part of section 6, making the appropriation.

"The proviso restricts and qualifies the jurisdiction conferred by the first clause of section 6 on the probate courts of the State over the persons and property of minor allottees of the Five Civilized Tribes, and the subject of the proviso is the restricted lands of living minors. The only restricted lands of minors thus far mentioned in the act are those individual allotments of living minors that were restricted by section 1 of the act. What, then, was the purpose of the proviso? We think to exclude some possible ground of misinterpretation that might exist, if such lands of minors as were restricted by section 1, and that Congress did not mean to include, were made subject to sale by the probate courts under the jurisdiction conferred by section 6. This language of section 6, conferring jurisdiction on the probate courts of the State over the persons and property of minor

allottees, is broad and comprehensive, and notwithstanding the fact that some of the lands of living minors were restricted by section 1, except for the proviso, it might be contended that section 6, coming later in the act, operated as a repeal of the restrictions placed by the terms of section 1 on certain allotments of living minors, and conferred jurisdiction on the probate courts to sell all the allotted lands of living minors. * * *

"According to Endlich on the Interpretation of Statutes, the question whether a proviso in whole or in part relates to and qualifies, restrains, or operates upon the immediately preceding provisions only of the statutes, or whether it must be taken to extend in whole or in part to all the preceding matters contained in the statute, must depend upon its words and import, and not upon the division of the act into sections. Bearing in mind these salutary rules of construction, we conclude that the inhibition against the alienation of 'restricted lands,' as the words are employed in the proviso of section 6, *supra*, had reference only to 'restricted lands' mentioned in the preceding provisions of the act, and not to inherited lands subsequently referred to and governed by section 9. Obviously it was the intention of Congress that the death of a minor allottee should operate to remove all restrictions on said allottee's land the same as from an adult allottee's lands, and we think the word 'living' was inserted in the proviso to make clear the purpose of Congress that the proviso was not intended to withdraw the allotments of deceased minors from the operation of section 9.

"The construction we have given the act harmonizes all its parts and effectuates the intent of Congress. In arriving at this view we have taken into consideration previous legislation with reference to the alienability of allotted lands after the death of the allottee. Thus it will be observed that by section 22 of the act of April 26, 1906, the adult heirs of any deceased Indian of either of the Five Civilized Tribes were authorized to sell and convey the land inherited from such decedent, and if there were both adult and minor heirs, then such minor heirs were authorized to join

in the sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory, and having in mind a possible change in the form of government, it was further provided that:

" 'In case of the organization of a State or Territory, then by the proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian.'

"Conveyances made under the provision of said section 22 by full-blood Indian heirs were to be subject to the approval of the Secretary of the Interior. It would seem then that Congress at all times from and after the passage of the act of April 26, 1906, intended that the allotments of deceased members of the Five Civilized Tribes should be alienable, and that the heirs should have the right to sell the land inherited from such decedent, subject to supervision, in the case of full-bloods and minors. Under the act of April 26, 1906, conveyances by full-blood Indian heirs were subject to the approval of the Secretary of the Interior, and under the act of May 27, 1908, such conveyances were subject to the approval of the county court having jurisdiction of the administration of the estate of the deceased allottee, and the probate courts of this State were granted jurisdiction over the persons and property of minor allottees.

"There is nothing in section 9 to indicate that Congress intended to draw a distinction between the adult full-blood heirs and the minor full-blood heirs with reference to the alienability of their inherited allotments, and it is reasonable to suppose that, if Congress intended that the interest inherited by full-blood minors in such lands should not be conveyed or subject to sale, it would doubtlessly have expressed such intention in unequivocal terms in section 9. There is nothing in the act of May 27, 1908, that evidences a change in the policy of Congress with reference to the alienability of such lands, except homesteads of certain allottees which are governed by the second proviso of section 9."

See also case of Crowe *vs.* Hardridge, 175 Pac., 115, in which the Supreme Court of Oklahoma held that plenary

power was vested in the county courts of Oklahoma to sell the interests owned by Indian minors in inherited lands.

The history of the legislation of Congress with reference to the allotments of Indian minors conclusively shows that it was not the intention to prohibit the sale of lands of this character through the probate courts. By section 4 of the Original Creek Agreement (act March 1, 1901) it was provided that allotments of minors should not be sold during minority. Section 22 of the act of April 26, 1906, changed the policy announced in the Original Creek Agreement and provided that inherited lands of minors could be sold by the guardian joining in the deed with the adult heirs under proper order of the court with the approval of the Secretary of the Interior. The act of May 27, 1908, substituted the "County Courts of Oklahoma" for the "Secretary of the Interior," and therefore it conclusively follows that these courts have the power to approve deeds of this character.

In all its legislation with reference to the Five Civilized Tribes Congress has shown an intention to make inherited lands less restricted than allotments in the hands of the original allottees. The act of May 27, 1908, is entitled "An Act to Remove Restrictions from Part of the Lands of Allottees of the Five Civilized Tribes," and in the body of the act Congress expressly disclaims any intention of imposing restrictions and provides that "nothing herein shall be construed to impose restrictions removed from land by or under any law prior to the passage of this act." Since lands of this character could be sold under the act of April 26, 1906, by the guardian joining in the deed with the adult heirs and since the act of May 27, 1908, gave the county courts of Oklahoma jurisdiction over lands of this character and disclaims any intention of imposing additional restrictions, it certainly follows that the county court has power to order a sale of this character, and a guardian's deed issued pursuant thereto is valid and must be upheld and sustained.

We call the court's attention to the fact that the procedure

followed in the sale of the Freeland Francis allotment has been the one generally followed throughout the eastern half of the State since this act went into effect, and guardians' deeds to lands inherited by full-blood minors have been universally held valid both by the courts and the bar of Oklahoma. Many thousands of acres of land of this character have been sold by the probate courts, and we do not know of a single instance where any lawyer ever questioned or disapproved the title. Numerous other objections have been raised to titles of this character and in numerous instances the State Supreme Court has been called upon to pass upon these objections; and in all those cases—and they are legion—the title to inherited lands of full-blood minors was never questioned on the ground that they were restricted within the meaning of the proviso of section 6 until the case of Chupco *vs.* Chapman, *supra.* Opposing counsel cannot cite a single case where a title like the one under consideration has been held bad by either the trial or appellate courts of either the State or Federal courts. The State Supreme Court is, of course, familiar with the views generally entertained of these titles by members of the bar and those views are in accord with the opinion in Chupco *vs.* Chapman.

Purchasers relying upon the advice of counsel have bought thousands of acres of land of this character in the eastern half of Oklahoma, and it is no exaggeration to say that millions of dollars have been paid out for oil lands upon the strength of the opinion generally entertained that these titles are good. There is probably not a lawyer in the State who has examined the titles to lands of this class who has not advised his clients that they are not restricted within the meaning of the proviso of section 6. For this court to reverse this holding at this time would be nothing less than a disaster. It would bring on a new flood of litigation upon a country already cursed with litigation and would result in hundreds of persons being dispossessed of lands who had purchased them with the earnings of a lifetime.

VI.

The appellants are concluded by the decree of the trial court holding that the Arkansas law of descent controls the devolution of this estate for the reason that no exceptions were taken to the holding of the court below on this point; and neither on appeal to the Circuit Court of Appeals nor on appeal to this court did the appellants assign as error this ruling of the trial court.

The appellants have filed a supplemental brief in which they contend that the Oklahoma law of descent and distribution designates the heirs and beneficiaries of this allotment. This is the first time that the correctness of the decision of the trial court on this point has been questioned. It seems to have occurred to counsel as an afterthought.

In the third paragraph of the decree (printed record, page No. 166) the trial court holds "that the Arkansas law of descent and distribution controls the descent of this land and upon the death of Freeland Francis and the issuance of certificate of allotment or patent to the above described tract of land, his mother, Annie Harris, inherited and became seized in fee simple of an undivided one-half interest * * *." By reference to this paragraph of the decision it will be seen that no exceptions were taken to this ruling.

On appeal to the Circuit Court of Appeals, not only did the appellants fail to assign any error on this ruling, but actually invoked the benefit of the ruling of the court on this point.

Their tenth assignment of error reads as follows: "The court erred in not quieting the title to a one-half interest in and to said lands of the plaintiff Annie Harris" (page 172, printed record). Had the Oklahoma law of descent governed, Annie Harris would only have acquired a one-fourth interest. In their appeal to this court the appellants have not assigned as error the ruling of the trial court on the law

of descent. Since they invoked the benefit of this rule in the Circuit Court of Appeals, and since they failed to assign as error the holding of the court on this point, they cannot at this time and in this manner question the correctness of the decree of the trial court.

Respectfully submitted,

WILLIAM M. MATTHEWS,
Solicitor for Appellees.

GEO. S. RAMSEY,
Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

ANNIE HARRIS, formerly ANNIE FRANCIS et al., Appellants,
v.
HARRY H. BELL et al.
} No. 186.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF THE SOLICITOR GENERAL ON BEHALF OF APPELLANTS.

Now comes the Solicitor General and submits this brief on behalf of the appellants because of the duty of the United States toward the appellants as Indian wards of the Government whose rights are involved, the questions presented for determination also affecting materially many other cases presented to and pending before the Department of the Interior as to the proper procedure and ruling therein.

STATEMENT.

A full and complete statement of the case has been made in the brief of the appellants submitted by the Creek National Attorney. The same is re-

158065—20—1

ferred to and makes it unnecessary to restate the facts.

The three points passed upon by the Circuit Court of Appeals which deserve to be emphasized in this brief are:

1. Whether land allotted and patented to a new-born Creek Indian after his death passes to his heirs as an inheritance or as a direct allotment.

2. The effect of section 9 of the act of May 27, 1908, 35 Stat. 312, 315, upon the power of the Secretary of the Interior to approve after that act, a deed executed prior thereto by an adult full-blood heir.

3. Whether a deed of land so acquired made on behalf of the minor heirs is valid if approved by the court having jurisdiction of the guardianship of such heirs, in view of section 9 of the said act of May 27, 1908, requiring approval by the court having jurisdiction of the settlement of the estate of the deceased allottee.

The Court of Appeals held as to the first point that the heirs took by inheritance. This was adverse to the contention of the appellants and is also contrary to the view held by the Department of the Interior upon which its practice and procedure in such cases had been predicated.

The brief above stated already filed in behalf of the appellants presents sufficiently the adjudications of the courts and the contentions respecting them, but it may serve a useful purpose to supplement those citations with some references to the rulings of the Interior Department.

In a communication dated July 25, 1912, addressed to the Superintendent of the Union Agency, the First Assistant Secretary of the Interior, in a case similar to the one at bar, held that the heirs took a direct allotment and that section 9 of the act of May 27, 1908, *supra*, was inapplicable to a conveyance made by a full-blood Creek heir. This decision, which is referred to as the Benjamin Harrison decision in departmental practice, is unreported, but it is set forth in the appendix hereto (Appendix A).

The correctness of this holding was later questioned in the department but was adhered to in an unreported opinion rendered on December 10, 1913, by the Assistant Attorney General for the Interior Department in the Ida Folsom case (Appendix B). In that opinion reference is made to another unreported opinion by that same official in the Louis Francis case (Appendix C).

Upon the second point the Court of Appeals held that the act of May 27, 1908, was prospective in its operation and hence a deed executed by an adult full-blood heir before that act was effective might yet, after the act was operative, be approved by the Secretary of the Interior under the power given in section 22 of the act of April 26, 1906, 34 Stat. 137, 145.

The opposite view has been entertained by the Interior Department for about eight years. Since the decision of the Court of Appeals in this case was rendered, deeds made long ago have been presented to the Secretary of the Interior for his approval.

To pass upon these deeds after the lapse of years presents an obvious departmental difficulty in the matter of ascertaining the facts to be considered by the Secretary as a basis of approval or disapproval of such deeds. We are aware, of course, that this is not a controlling consideration.

Respecting the third point in the case, we firmly believe the Court of Appeals to be wrong in holding that the approval of the deed made on behalf of minor heirs by the court having jurisdiction of the guardianship of those heirs is sufficient.

Freeland Francis, the deceased allottee, died in the territory out of which Wagoner County, Okla., was created. The United States Court for the Western District of Indian Territory took jurisdiction of the intestacy proceedings, the State not then being organized. Subsequently, these proceedings were transferred to the County Court of Muskogee County. The deed was approved by the County Court of Okmulgee County.

It is clear, therefore, that the court which approved the deed was not "the court having jurisdiction of the settlement of the estate of the deceased allottee."

Since the statute is so clear in pointing out that the court having power to approve a deed executed on behalf of minor heirs is "the court having jurisdiction of the settlement of the estate of the deceased allottee" (section 9, act of May 27, 1908), it is plain that the construction given it by the Court of Appeals was erroneous.

The legislative intent is plain and the language is without ambiguity; therefore, the statute is not open to construction. *United States* v. *First NationalBank*, 234 U. S. 245, 258; *Mackenzie* v. *Hare*, 239 U. S. 299, 307, 308; *Caminetti* v. *United States*, 242 U. S. 470, 485–490.

CONCLUSION.

The judgment of the Circuit Court of Appeals should be reversed and the case remanded to the United States Court for the Eastern District of Oklahoma for further proceedings.

Respectfully submitted.

ALEX. C. KING,
Solicitor General.
FRANK K. NEBEKER,
Assistant Attorney General.

JANUARY, 1920.

APPENDIX.

"A."

INHERITED LAND CASE NO. 858; CONVEYANCE OF INHERITED LANDS OF BENJAMIN HARRISON, DECEASED CREEK ALLOTTEE.

DEPARTMENT OF THE INTERIOR,
Washington, July 25, 1912.

Mr. DANA H. KELSEY,
Superintendent Union Agency,
Muskogee, Oklahoma.

SIR: The department has considered your report of March 30, 1912, submitting for approval a conveyance dated January 7, 1911, executed by Ellen Cooper, purporting to convey to James A. Harris the interest of the grantor as a full-blood Indian in and to certain lands in the Creek Nation allotted to her as the heir of Benjamin Harrison, deceased.

This deed was submitted for departmental action because it was supposed that approval was necessary, in accordance with the opinion of the Attorney General of August 17, 1909, relating to conveyances of inherited lands in the Five Civilized Tribes. There is a question, however, whether said opinion is applicable to this case, the answer being dependent upon the class to which the land belongs, that is to say, whether it came to the grantor as an inheritance or as an original allotment.

Said Benjamin Harrison died in 1900, when an infant. He was survived by his father, Eli Harrison, his mother, Ellen Harrison, and by two brothers and a sister. His father died in 1909, prior to the execution of the deed now submitted for approval. His mother and the brothers and sister are living.

Upon the death of said Benjamin Harrison, his estate passed absolutely to his mother as sole heir, she being the "nearest relation" under the Creek law as construed by the Supreme Court of Oklahoma.

The allotment was selected in the name of Benjamin Harrison March 26, 1902, subsequent to the date of his death and at a time when the first Creek agreement was in effect.

That agreement, which is incorporated . the act of March 1, 1901 (31 Stat., 861), contains t' 'ollowing provision, which is a part of section 28 ..ereof:

> All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled under section twenty-one of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," shall be placed upon the rolls to be made by said commission under said act of Congress, and if any such citizen has died since that time, or may hereafter die before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall *descend* to his heirs according to the laws of descent and distribution of the Creek Nation, and be *allotted* and distributed *to them* accordingly.

Out of the facts stated and the law quoted above, the question arises whether any right to the particular land in question ever vested in the decedent; also whether he ever had any estate of inheritance in the lands selected in his name. In other words, the question is, Did this land pass to Ellen Cooper, nee Harrison, as an inherited or an original allotment?

Before answering these questions, I will refer briefly to certain expressions of opinion heretofore rendered by the courts and the department. In an opinion rendered March 16, 1903, Mr. Van Devanter, then Assistant Attorney General for this department, advised the Secretary of the Interior that where citizens of the Creek Nation died before allotments were made in their names, it was unnecessary for the department to issue separate deeds or patents for their homestead and surplus allotments. The tenor of this opinion is clearly to this effect, that allotments in such cases were to be made directly to the heirs.

January 13, 1908, the department had occasion to determine whether a certain oil and gas lease of allotted lands in the Creek Nation was executed by the proper party as lessor. In that case the original allotment selection was predicated upon the citizenship and enrollment of Martha Wiley, who died August 16, 1899. The selection was made on the 21st day of October following. Construing the section of the first Creek agreement quoted above in connection with these facts, the department held that the allotment, which would have been the property of Martha Wiley had she lived, passed, not by virtue of inheritance but by grant from the Creek Nation, directly to her mother, Melissa Wiley, and therefore that the latter as owner of the fee was a proper party to execute the lease.

This conclusion was based upon the opinion of the Supreme Court in the case of *Hall* v. *Russell* (101 U. S. 503). In that case the court construed the act of Congress of September 27, 1850 (9 Stat. 496), commonly known as the Donation Act, granting to each person having certain qualifications the

right to settle upon and cultivate a tract of public land in Oregon not in any case exceeding in extent one section, in order that he might, by complying with all the conditions, including a residence of four consecutive years, and making proof thereof, be entitled to a patent for such tract. It was held that the title to the soil did not vest in the settler before the conditions had been fully performed, and that at his death, after a residence of less than a year upon the land, he had no devisable interest therein. The court said in part (p. 513):

> It was provided that the possessory right of a deceased settler should go to his heirs, and that they might get the land on making the requisite proof without further residence and cultivation of their own. Their title to the land was to come, not from their deceased ancestor, but from the United States. The title, it is true, was granted to them by reason of the possessory rights of their ancestor, but these were rights which he could not transfer, and which passed to them under the statute without any act of his. On his death his heirs became qualified grantees. * * * We attach no importance to the word "descend," as used in this section. In section 4 the word selected to convey substantially the same idea was "entitled." The thing done was to give the heirs of a settler the benefit of his rights and to designate them as the recipients of the bounty of the Government, instead of him.

In the decision of the Supreme Court rendered April 15, 1912, in the case of *Mullin and Jansen* v. *The United States*, the court had occasion to construe a similar provision in the Choctaw-Chickasaw agreement of 1902, relating to allotments to the heirs of

persons who died prior to receiving their shares of the lands and moneys of said tribe. The court referred to the similar provision in the Creek agreement of 1901, and quoted the opinion of Mr. Van Devanter of March 16, 1903, referred to above. The discussion of the Supreme Court following its reference to that opinion shows unmistakably that an allotment made under the circumstances presented in this case was undoubtedly regarded by the court as a direct grant or allotment to the heirs, and was not considered in any sense whatever as a conveyance of the allotted land of the ancestor.

In a still more recent case, decided May 14, 1912, by the Supreme Court of Oklahoma, it was held that a duly enrolled citizen of the Creek Nation, who died on March 1, 1901, without receiving his allotment or a certificate of selection therefor, died seized of no estate of inheritance therein.

In view of the foregoing, I am constrained to conclude that no right or title ever vested in the said Benjamin Harrison to the land constituting the allotment selected in his name; that he died seized of no estate of inheritance therein; and that the allotment when made passed by direct grant of the Creek Nation with the approval of the Secretary of the Interior to his heirs; and that they took said land not as an inherited but as an original allotment.

It is next to be determined what relation this conclusion sustains to the law relating to alienation of allotted lands and removal of restrictions therefrom and ascertain what duty devolves upon the department in the premises. Section 1 of the act of May 27, 1908 (35 Stat., 312), defines the status of the lands "*allotted* heretofore or hereafter to *allottees* of the Five Civilized Tribes" according

to the several classes of citizens as determined by their enrollment. It will be observed that this section makes no distinction between lands allotted to citizens by reason of their enrollment and those allotted to them by reason of the enrollment of others.

Section 4 of the same act provides that "allotted lands" shall not be subjected or held liable to any form of personal claim or demand against the allottees arising or existing prior to the removal of restrictions, other than contracts expressly permitted by law. Here again the term "allotted lands" is used in a general sense, without reference to the origin of the allotment right.

Section 9 of the same act provides that the death of "any allottee" of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land, subject to certain provisos. Clearly there is nothing in this section to suggest that a proper application of it would be restricted to inherited lands originally allotted to the ancestor.

As the consideration paid for this conveyance was apparently adequate, I am naturally disposed to approve the deed, and would do so were it not for the insuperable legal obstacles referred to above. My approval would accomplish nothing toward the validation of the deed, and the grantee, if he relied upon it, might ultimately, after holding the property for a period of time and improving the same at perhaps a great cost, lose everything. This case illustrates like many others the necessity of remedial legislation authorizing the Secretary of the Interior to adjust titles, as recommended by the department in its report of April 15, 1912, relating to Senate bill 6339.

As this land constitutes an original allotment, we must look to the laws governing the removal of restrictions and the sale of allotted lands for the relief of the petitioner rather than to those laws affecting inherited allotments. You are therefore directed to take up the matter with a view to the removal of restrictions from the land, and to permit the allottee to dispose of it by special sale to Mr. Harris. The value must be determined, however, as of the present time, as under the law no part of the consideration originally paid can be credited upon the new transaction except so much thereof as may be in the possession of the allottee at this time.

All papers are returned herewith.

Respectfully,

SAMUEL ADAMS,
First Assistant Secretary.

"B."

DECEMBER 10, 1913.

The SECRETARY OF THE INTERIOR.

SIR: By your reference, I am in receipt of the letters of the Commissioner of Indian Affairs of November 10 and December 1, 1913, requesting my opinion on the legal questions involved in the matter of the attempted conveyance by Ida Folsom, as sole heir of Lizzie Franklin, a deceased Choctaw, of certain lands selected and allotted after the death of the latter.

It seems that this deed was submitted to the superintendent of the Union Agency with request for approval by the Secretary of the Interior, but that the superintendent, pursuant to the opinion of the First Assistant Secretary of the Interior of July 25, 1912, in the Benjamin Harrison case, advised the petitioner to the effect that the land in question having been selected after the death of the ancestor, passed as a direct grant from the tribe to Ida Folsom, instead of by inheritance from Lizzie Franklin.

It is contended: (1) That the case now under consideration does not fall within the ruling of the Harrison case; (2) that the department misconstrued the law in the opinion rendered in that case; and (3) that the right to alienate having once attached to the land, it is beyond the power of Congress to impose restrictions.

In the Harrison and Franklin cases the facts, in all material respects, are similar. In each case the land was selected after the death of the ancestor, the land

became alienable prior to the act of April 26, 1906 (34 Stat., 137), and the attempted conveyance was made after that act.

I therefore conclude that the rule adopted in the Harrison case is applicable to the Franklin case.

The second question involves a matter of statutory construction. Having considered the subject fully in my opinion of December 6 [10], 1913, relating to the contested oil and gas lease covering the allotment of Louis Francis, I deem it unnecessary to discuss the question at length. It is sufficient to repeat the conclusion then reached, that allotments of tribal lands of the Five Civilized Tribes, selected after the death of the ancestor, pass by direct grant of the tribe to the heirs instead of by inheritance. If the conclusion is correct that allotments, in such cases, are, for the purposes of the division of common property, direct grants, it seems to me that it would be inconsistent and illogical to hold that for purposes of distribution in the family such allotments are estates of inheritance.

It may be well, perhaps, to emphasize particularly the fact that in this, as in the Harrison case, the attempted conveyance was made subsequent to said act of April 26, 1906. The importance of this is due to the significance given by the court in the case of *Mullen* v. *United States* (224 U. S. 448) to the fact that the deeds then under consideration were executed prior to the act of April 26, 1906.

It might be well to add also that the conveyance discussed in *Reed* v. *Welty* (197 Fed., 419) was made prior to the act last mentioned and hence that there is no necessary conflict between the decisions in these cases and the decision rendered by the department in the Benjamin Harrison case.

The third question, being of a fundamental nature, is more serious. It challenges the power of Congress to enact the legislation in question. As to this, it seems to me that if Congress was satisfied that it possessed the necessary power to legislate in this way for the protection of the Indians, the correctness of this opinion should not be questioned by the executive branch of the Government, particularly by the Interior Department, which must necessarily stand, in so far as it reasonably can, for that construction which will benefit the people whose interests are especially intrusted to its care and guardianship. Aside from any other consideration, I think it would be inappropriate for me, even if I were disposed so to do, to express an adverse opinion concerning the power of Congress in this request before final determination of the case of *United States* v. *Bartlett and Lashley*, now pending in the Supreme Court upon an appeal taken by the United States.

Premises considered, you are advised that in my opinion the deeds executed by Ida Folsom should not at this time be approved, but that parties who presented same should be advised that they may elect whether deeds shall be returned to them without any action by the department or held here without any action until the final determination of *United States* v. *Bartlett et al.*

The papers received in the Franklin case with the Commissioner's letters are herewith.

Very respectfully,

PRESTON C. WEST,
Assistant Attorney General.

"C."

DECEMBER 10, 1913.

The SECRETARY OF THE INTERIOR.

SIR: You have referred to me for an opinion in the matter of contested oil and gas lease covering allotment of Louis Francis, deceased, referred to in letter of September 20, 1913, from the Second Assistant Commissioner of Indian Affairs, in which letter the facts in reference thereto are stated as follows:

> On June 24, 1913, the department approved an oil and gas lease executed by Annie Givens, nee McGilbra, and Robert Francis, as sole heirs of Louis Francis, deceased. Parts of the lease were forwarded to the superintendent of Union Agency for appropriate distribution, but before delivery of the said parts, a protest was filed with the superintendent by E. C. Bothwell, claiming to represent certain parties who had purchased the land, objecting to the approval of the lease or the delivery of the parts thereof. It appears that Louis Francis, deceased infant, full-blood Creek Indian, was born March 1, 1900, and died August 8, 1901, survived by his mother, Annie McGilbra. The superintendent reports that it is shown that said Louis Francis was the illegitimate child of Annie Givens, nee McGilbra, and that upon examination of the records of the Commissioner to the Five Civilized Tribes, evidence was discovered tending to show that said Annie McGilbra, mother of Louis Francis, was at one time the wife of Robert Francis. The superintendent also reports that said Louis Francis was enrolled as the child of Rob-

> ert Francis, and therefore considered it proper that said Robert Francis should join in the execution of the lease. The land described in the lease was regularly allotted to Louis Francis on December 20, 1902, which was subsequent to the death of the allottee. It appears that conveyances were made on November 22, 1904, March 24, 1905, July 5, 1907, July 9, 1907, and August 9, 1907, by Annie Givens and William Givens, her husband, and Robert Francis and his wife, Millie Francis. On March 8, 1909, Annie Givens and Robert Francis executed a warranty deed purporting to convey to George W. Barnes all their right, title, and interest in and to the land involved, which deed was approved by the county judge of McIntosh County on March 15, 1909.

Reference is also made in the letter to the departmental decision of July 25, 1912, in the Benjamin Harrison case, wherein it was decided that where a Creek citizen entitled to an allotment died without receiving the same, such citizen was seized of no estate of inheritance therein, and that the allotment made to his heirs passed to them by direct grant of the nation, and that they took said land not as an inherited, but as an original, allotment. The letter concludes:

> As there seems to be a conflict between the decision of the department and the decisions of the Federal courts as to whether the heirs would take said land as an inherited or as an original allotment, the papers are transmitted herewith for the opinion of the Assistant Attorney General.

There is but a single point of difference in fact between the Benjamin Harrison case and that here presented, viz, that in the former, Benjamin Harrison,

the original beneficial cause of the allotment in question, died prior to the ratification of the original Creek agreement, whereas in the case in hand, Louis Francis, the beneficial cause of this allotment, did not die until August 8, 1901, or nearly three months subsequent to the ratification of the original Creek agreement. I can not believe, however, that this makes any essential difference.

In the case of *Shulthis* v. *McDougal* (170 Fed., 529) the court thus states the facts:

> Andrew J. Berryhill was the son of George Franklin Berryhill, a member of the Creek Nation of the mixed blood, and Clementine Berryhill, his wife, a noncitizen of that tribe. He was born on the 6th day of May, 1901, and died in the month of November of that year, leaving no brothers or sisters surviving him. At no time during his life was he entitled to enrollment as a member of the tribe, or to an allotment of its property. After his death, by the supplemental agreement entered into between the Commission to the Five Civilized Tribes and commissioners of the Creek Nation (act June 30, 1902, c. 1323, 32 Stat., 501), proclaimed by the President August 8, 1902, it was provided in section 7, as follows:
>
> All children born to those citizens who are entitled to enrollment under previous acts, subsequent to July 1, 1900, and up to and including May 25, 1901, and living upon the latter date, shall be placed on the rolls made by said commission.

Andrew J. Berryhill met precisely the conditions of this agreement. He died, however, before the agreement was entered into, as already stated. * * *

And the court said:

> The word "descend" is, of course, inapplicable to the actual contingency provided for by

the statute, because that contingency contemplates the death of the child before he had actually become seized of any interest in the land. The word "descend" is a word of art, and indicates the transference of property by inheritance. If any significance is to be given to it as used in this section, it must be held that the intent of the parties to the agreement was that the land should pass to the same persons and in the same proportions as it would have passed if the child had died seized of it. Any other construction simply obliterates this word, and makes the land pass to the parties who are heirs directly by allotment from the tribe. The statute itself not only declares that it shall "descend," but also declares that it shall be "allotted and distributed," to the heirs. It is manifest, therefore, that both ideas were in the minds of the parties to the agreement.

These kinsmen got all their right to additional lands under and through the enrolled member who had died. Whether the ancestor was actually seized of the property or not in his lifetime, was immaterial. It was the intent of the statute that the property should pass by the same right and in the same manner that it would have passed if the person enrolled had survived to receive his allotment. The tribe was not bestowing such land as a bounty, but was simply providing for the right of inheritance.

* * * * *

We next pass to the rights of the parties to this controversy under the conveyances from George Franklin Berryhill. On June 5, 1906, he and his wife executed a warranty deed of the property to Edmund and Perry McKay in consideration of the sum of $2,000. It is now contended that this deed was void because at the time of its execution the grantor was

without legal capacity to make such a conveyance. It is conceded that George Franklin Berryhill had only such power to dispose of the lands in question as was granted to him by act of Congress. Both parties base their right upon section 22 of the act approved April 26, 1906, which reads as follows:

> That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe, * * * may sell and convey the lands inherited from such decedent.

George Franklin Berryhill and appellant Shulthis make the same argument upon this statute that they did upon section 7, above quoted. It is urged that the land in question is not "inherited" land. For reasons already explained, that contention, while technically right, is substantially wrong. The scheme of the statute clearly indicates that the land was to be regarded the same as if it had been inherited. No sound reason can be adduced for treating these lands otherwise than they would have been treated if Andrew J. Berryhill had survived long enough to receive the allotment. This interpretation is further supported by the provision of the several acts dealing with these allotments. Every member of the tribe was allotted a share in the tribal lands. Such allotment is repeatedly spoken of in the act as his "homestead." It was intended to be such, and to serve as a sure basis for his own support and the support of his family, either actual or prospective. To protect this homestead, it was made inalienable for the term of five years. The reasons for making it inalienable did not apply to lands obtained by

> inheritance, and for that reason the statute last quoted was passed granting power to convey the same. The lands here in question fall under the same policy as lands obtained by inheritance, and the statute should be held to apply thereto. Berryhill, therefore, had power to make the deed to the McKays.

In considering the Shulthis-McDougal case, however, it must be borne in mind that it was decided almost three years prior to the decision of the Supreme Court in the Mullen case, hereinafter referred to, and the further fact that no party concerned in the case was asserting that the lands were free of restriction until after the passage of the act of April 26, 1906, and that all parties based their rights upon the proper construction of section 22 of the last-named act.

In *Mullen* v. *United States* (224 U. S., 448) the lands involved were allotted in the name of Choctaw Indians whose names appear upon the roll, but who died after the ratification of the agreement and before receiving an allotment. The deeds in question were made by their heirs, who were Choctaws of the full blood, and said deeds were dated prior to April 26, 1906. After discussing the various provisions of the Choctaw-Chickasaw agreement and pointing out that there was no substantial difference in purpose and effect with reference to the Creek agreement, Mr. Justice Hughes, who delivered the opinion of the court, proceeded to say:

> In both cases the lands were to go immediately to the heirs, and the mere circumstance that under the language of the statute the allotment was to be made in the name of the deceased ancestor instead of the names of the

heirs furnishes no reason for implying a requirement that there should be a designation of a portion of the lands as homestead.

We have, then, a case where all the allotted lands going to the heirs are of the same character and there is no restriction upon the right of alienation expressed in the statute. Had the lands been allotted in the lifetime of the ancestor, one-half of them, constituting homestead, would have been free from restriction upon his death. The only difficulty springs from the language of paragraph 16, limiting the right of heirs to sell "surplus" lands. But, on examining the context, it appears that this provision is part of the scheme for allotments to living members, where there is a segregation of homestead and surplus lands, respectively. Whatever the policy of such a distinction which gives a greater freedom for the disposition by heirs of homestead lands than of the additional lands, there is no warrant for importing it into paragraph 22, where there is no such segregation. It would be manifestly inappropriate to imply the restriction in such cases so as to make it applicable to all the lands taken by the heirs, and there is no occasion or authority for creating a division of the lands so as to impose a restriction upon a part of them.

There being no restriction upon the right of alienation, the heirs in the cases involved in this appeal were entitled to make the conveyances. The bill alleged that the tracts embraced in these conveyances were "allotted lands," and certificates of allotment had been issued. These Indian heirs were vested with an interest in the property which in the absence of any provision to the contrary was the subject of sale. The fact that they were "full-blood" Indians makes no difference in

this case, for at the time of the conveyances in question heirs of the full-blood taking under the provisions of paragraph 22 of the supplemental agreement had the same right of alienation as other heirs.

In *Reed* v. *Welty* (197 Fed., 419), the District Court of the United States for the Eastern District of Oklahoma, the facts were—

> that Thomas and Mary Knight, husband and wife, were duly enrolled full-blood Creek citizens. They had three children, London, Ramsey, and Robert Knight, also duly enrolled full-blood citizens of the Creek nation. Thomas and Mary Knight, the parents, both died intestate in 1901, before receiving their respective allotments, leaving surviving them the three children mentioned as their heirs. After the death of the parents, the land in controversy was allotted to their heirs. Subsequently, and on July 26, 1904, the plaintiff purchased from London and Ramsey Knight their respective interests in the land, securing from them a warranty deed therefor in consideration of $1,300, which deed was duly recorded, and the said London and Ramsey Knight delivered to plaintiff the full possession and control of the land so far as their interests were concerned. Robert Knight was and still is an infant. Plaintiff has been ever since, and now is, either in person or through his tenant, in open, notorious, and adverse possession of said land, and at the time of the execution of the deed by London Knight to defendant hereinafter mentioned, the said London Knight was not in possession of the land, and had never received any rents from the same. On July 28, 1908, London Knight and his wife, Susan Knight, executed to the defendant a deed for an undivided one-third

interest in the land, who had the same approved by the county court, and had the same recorded.

The court upon demurrer to the bill setting forth the foregoing facts, held that the decision in the Mullen case, although primarily dealing with the Choctaw-Chickasaw agreement, was equally applicable to the Creek agreement, and concludes as follows:

> * * * In the Creek agreement the commission is dealing with another of the Five Tribes, but with the same object in view, that of the allotment of the tribal lands to the individual members, and the agreement is so similar to the Choctaw-Chickasaw agreement in terms and arrangement that the two classifications of allotments found by Justice Hughes in the latter agreement may also be said to exist in the former, and, as in the Choctaw-Chickasaw agreement, the restrictions upon alienation must be held to have only applied to the first class; that is, allotments to members of the tribe living at the time of allotment.
>
> It follows that on July 26, 1904, London and Ramsey Knight had an alienable interest in the land in question, and the demurrer must be overruled. So ordered.

Subsequently, and on February 3, 1913, the Supreme Court of Oklahoma, in *Deming Investment Company* v. *Bruner Oil Company* (130 Pac., 1157), had before it precisely the question dealt with in *Reed* v. *Welty*, supra, and reached the same conclusion as was reached by the District Court for the Eastern District of Oklahoma. No reference, however, is made in the opinion to the decision in *Reed*

v. *Welty*, but the whole is bottomed upon the decision in *Mullen* v. *United States*. The facts were that Martha Hohlahta, who was a full-blood citizen of the Creek Nation, died in May, 1899, at the age of 2 years, leaving surviving her no brothers or sisters or descendants of such, and leaving as her only heirs at law her mother and father, Cheparn and Lucy Hohlahta, who were also full-blood citizens of the Creek Nation. On the 6th day of April, 1904, the name of Martha Hohlahta was placed by the Commission to the Five Civilized Tribes as a full-blood Creek Indian, and the lands in controversy allotted to the heirs of the deceased as her homestead on the 13th day of the following July. Thereafter patent was issued, designating the same as a homestead, and on the 27th day of May, 1905, Cheparn and Lucy Hohlahta executed and delivered their warranty deed to Charles W. Loeffler, and by mesne conveyances passed to a trustee for Deming Investment Company January 18, 1906. On the 15th of April, 1907, Cheparn and Lucy Hohlahta executed and delivered an oil and gas mining lease on the same lands to the Bruner Oil Company. The question presented was whether the Deming Investment Company had derived good title by virtue of its previous conveyance, or whether the original Indian owners still held the title so as to enable them to make a lease to the Bruner Oil Company. It was held by the court that Cheparn and Lucy Hohlahta took said lands free from restriction upon alienation,

and their conveyance on the 27th day of May, 1905, passed the title out of them to their grantors. It was said:

> An Indian having died before taking an allotment, the land he was entitled to receive as an allotment descends directly to his heirs under the law of descent and distribution named, and shall be allotted and distributed to them accordingly. The land allotted to the heirs of deceased is neither homestead nor surplus, and there is no more reason for applying the restriction upon the alienation of the surplus to this entire allotment than there is to apply the restrictions upon the alienation of homesteads.

While it must be confessed that the last three decisions referred to are apparently somewhat paradoxical, it is to my mind, nevertheless, clearly deducible therefrom that an allotment made on account of an Indian who never lived to receive the same himself, and who therefore never was at any time during his life seized of any estate in the land, is a direct allotment to those who, for the want of a better term, are denominated his heirs, but who are in reality only persons whom the statute points out as the first takers. *Stevenson's Heirs* v. *Sullivant* (5 Wall., 207), and further, that lands so allotted were without any restriction upon alienation up to the passage of the act of Congress approved April 26, 1906 (34 Stat., 137).

It must be equally apparent that under the doctrine of the Shulthis case, *supra*, and the case of *United States* v. *Knight and Avery*, decided by the United States Circuit Court of Appeals for the eighth circuit, at the May term, 1913, but not yet reported, a conveyance by the full-blood father and mother of

the deceased child, on whose account this allotment was made, duly approved by the county court of the county having jurisdiction of the settlement of his estate, would be effectual to pass the title to the lands in question to the grantee in such deed, no other reason for its invalidity appearing.

There is no showing nor attempted showing in any of the papers submitted to me that the deeds of November 22, 1904, March 24, 1905, and March 8, 1909, are invalid for any other reason than because of supposed restrictions upon alienation to be found in the acts of Congress. Indeed, it would be very questionable whether such an issue could rightfully be investigated and determined by this department. It is apparent, therefore, that whatever title Annie McGilbra and Robert Francis had in these lands passed out of them long prior to the execution of the lease in question, which bears date February 21, 1913.

From the papers submitted to me it appears that the lease was approved June 24, 1913. Had this been an absolute and unqualified act on the part of this department it would have presented a very serious question as to whether any further jurisdiction remained to cancel or require such appro or refuse delivery of the document. By amendments to the rules with regard to such leases, approved May 13, 1913, and effective June 1, 1913, it is provided, section 26:

> Operations will not be permitted under any lease requiring approval of the Secretary of the Interior until the approved lease has been delivered. If there has been a contest respecting a lease or leases, the approved, disapproved, or cancelled parts thereof will be held in the office of the superintendent for five days after

promulgation by him, by mailing or delivery, of the department's decision, and will not be delivered if within that period a motion for review or reconsideration be filed, until such motion is passed upon by the department.

It does not definitely appear from any of the papers submitted to me precisely when notice of the approval was given to the United States Indian superintendent at Muskogee, nor in exactly what form the protestant, E. C. Bothwell, first made his objection. The letter from the acting superintendent of September 12, 1913, makes the following statements:

> In connection with the above, I have the honor to advise that on or about the time notice of approval of the lease and accompanying papers were received at this office, E. C. Bothwell, claiming to represent the parties who had purchased the land, objected to the approval of the lease or the delivery of the copies of the parts thereof until he had had an opportunity to file a formal protest.
>
> Subsequently, and on July 31, 1913, the protest of Mr. Bothwell was received, a copy of which was in due course of business furnished the attorneys of the lessee, and both the lessee and protestant were given a limited time within which briefs or arguments in support of their respective contentions might be filed.
>
> On August 30, 1913, this office received a brief, submitted by Joseph P. Rossiter, of Coffeyville, Kansas, attorney for Andrew T. Sticelber, in which it is contended that the lease to his clients should be delivered and that the protest against same should be dismissed on the ground that the land involved was restricted for the reason that the case on principle is precisely the same as the case of Benjamin Harrison, deceased, decided by the

First Assistant Secretary of the Interior on July 25, 1912.

It does sufficiently appear, however, from the rule cited and from the action in the Indian superintendent's office that the approval of the lease in question, June 24, 1913, was not intended to be final, unqualified, and irrevocable, and that proceedings were taken to present matters to the department showing particular grounds for rescission of the tentative approval made. I, therefore, suggest that a formal order reconsidering the approval and canceling and vacating the same be made and that this order be indorsed upon the several parts of the lease now on file, and that said several parts of the lease be returned to the party from whom they were originally received.

Respectfully,

PRESTON C. WEST,
Assistant Attorney-General.

○

Syllabus.

HARRIS, FORMERLY FRANCIS, ET AL. v. BELL ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 51. Argued January 26, 1920.—Decided November 15, 1920.

1. Lands representing the distributive share of a Creek Indian who died after his enrollment and before their selection or allotment and which thereafter were selected, allotted and deeded in his name, pursuant to the Act of April 26, 1906, c. 1876, § 5, 34 Stat. 137, and earlier statutes, are to be considered as going to his heirs, not as a direct allotment to them but as an inheritance, the alienability of which by full bloods is determined, not by § 19 of the Act of 1906 or § 1 of the Act of May 27, 1908, c. 199, 35 Stat. 312, respecting allotments to living allottees, but by the provisions governing alienability by heirs. P. 108.
2. In this regard it is not the usual distinctions between title by purchase and title by descent that must control, but the letter and spirit of the acts of Congress. *Id.*
3. The power vested in the Secretary of the Interior by the Act of April 26, 1906, *supra*, to approve or disapprove conveyances of inherited allotments when made by adult full-blood Indian heirs, was not recalled by the Act of May 27, 1908, *supra*, as to conveyances made, though not approved, before its enactment, nor does the lapse of 2½ years between the deed and its approval affect the validity of the conveyance in the absence of any lawful intervening disposal. P. 109.
4. The provision in § 9 of the Act of May 27, 1908, *supra*, that no conveyance of any interest of any full-blood Indian heir shall be valid "unless approved by the court having jurisdiction of the settlement of the estate" of the deceased allottee, prescribes a rule for future conveyances. P. 110.
5. Section 6 of the Act of May 27, 1908, *supra*, which subjects the persons and property of minor allottees to the jurisdiction of the probate courts of the State of Oklahoma, does not include or affect inherited lands, in its provision that "no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of the court or otherwise." *Id.*

6. Section 6 of the Act of May 27, 1908, *supra*, and other acts of Congress, explicitly subject the persons and property of Indian minors of the Five Civilized Tribes to the jurisdiction of the probate (county) courts of Oklahoma; § 9 of that act declares that the death of any allottee shall remove all restrictions upon the alienation of his land, with the proviso that no conveyance of any interest of any full-blood Indian heir in such land shall be valid "unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee." *Held*, harmonizing the sections, that the proviso of § 9 is to be taken as referring only to adult full-blood heirs, and that a probate court having jurisdiction over the persons and property of minor full-blood heirs, but not of the settlement of the estate of the deceased allottee from whom they inherited, was the proper court to sanction a conveyance of the allotment made by their guardian. P. 111.
7. The general rule giving to the court of guardianship exclusive power to direct the guardian and supervise the management and disposal of the ward's property, obtains in Oklahoma, and an intention to depart from it in an act of Congress respecting the lands of minor full-blood Indians should not be accepted unless very clearly and explicitly evinced. P. 112.

250 Fed. Rep. 209, affirmed.

THE case is stated in the opinion.

Mr. James C. Davis for appellants.

The Solicitor General and *Mr. Assistant Attorney General Nebeker* also filed a brief on behalf of appellants.

Mr. William M. Matthews, with whom *Mr. George S. Ramsey* was on the brief, for appellees.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

By this suit certain conveyances of lands allotted in the name and right of a Creek Indian after his death were assailed, and their cancellation sought, by the heirs who

made them. On the final hearing the District Court upheld two of the conveyances, 235 Fed. Rep. 626, and that decree was affirmed by the Circuit Court of Appeals. 250 Fed. Rep. 209. The present appeal is by the heirs.

The circumstances to be considered are as follows: By the Act of March 1, 1901, c. 676, 31 Stat. 861, as modified by the Act of June 30, 1902, c. 1323, 32 Stat. 500, provision was made for the allotment and distribution of the Creek tribal lands and funds among the members of the tribe. An enrollment was to be made of (a) all members living on April 1, 1899, (b) all children born to members after that date up to and including July 1, 1900, and living on the latter date, and (c) all children born to members after July 1, 1900, up to and including May 25, 1901, and living on the latter date. All who were so enrolled were to share in the allotment and distribution. If any of these died before receiving his allotment and distributive share, the lands and moneys to which he "would be entitled if living" were to "descend to his heirs" and be "allotted and distributed to them accordingly." A provision in the Act of March 3, 1905, plainly intended to amend and supplement the earlier acts, authorized the inclusion of all children born between May 25, 1901, and March 4, 1905, and living on the latter date, c. 1479, 33 Stat. 1071.

Originally all lands allotted to living members in their own right were subjected to specified restrictions on alienation; but those allotted in the right of deceased members were left unrestricted up to the passage of the Act of April 26, 1906, c. 1876, 34 Stat. 137. *Skelton* v. *Dill*, 235 U. S. 206; *Adkins* v. *Arnold*, 235 U. S. 417, 420; *Mullen* v. *United States*, 224 U. S. 448; *Brader* v. *James*, 246 U. S. 88, 94; *Talley* v. *Burgess*, 246 U. S. 104, 107. Section 19 of that act materially revised the restrictions respecting lands of living allottees, and § 22 dealt with the alienation of inherited lands, including, as this court has

held, lands allotted in the name and right of a member after his death. *Talley* v. *Burgess, supra*, p. 108. Section 22 read as follows:

"That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the organization of a State or Territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe."

Section 5 of the same act directed that all patents or tribal deeds for allotments should issue "in the name of the allottee"—meaning the member in whose right the allotment was made—and provided that if he were then dead the title should inure to and vest in "his heirs," as if the patent or deed "had issued to the allottee during his life." A like provision is found in § 32 of the Act of June 25, 1910, c. 431, 36 Stat. 855.

Further provisions bearing on the alienation of lands of living allottees and also inherited lands were embodied in the Act of May 27, 1908, c. 199, 35 Stat. 312, to be noticed presently.

The lands in question were allotted in the name and right of Freeland Francis, a Creek child who was born in 1903, was lawfully enrolled June 10, 1905, and died twelve days later. After his death the allotment was

duly selected and made by the Commission to the Five Civilized Tribes, and in regular course a patent or deed was issued in his name. His heirs, to whom the title passed under the statutes already noticed, were his mother, Annie Francis (now Harris), his half-brother, Mack Francis, his brother, Amos, and his sister, Elizabeth. These were all enrolled Creeks,—three being full-blood Indians and one a half-blood.

January 15, 1908, after the allotment was perfected, the mother, who was an adult, sold and conveyed her interest, and that conveyance was approved by the Secretary of the Interior, July 6, 1910, the approval as endorsed on the deed reading:

"The conveyance by Annie Francis of her interest as full-blood Indian heir in and to the within described lands allotted to Freeland Francis, a new born Creek citizen, Roll No. 1070, who died prior to May 27, 1908, is hereby approved, in accordance with the provisions of the Act of Congress approved April 26, 1906."

The half-brother, Mack, sold and conveyed his interest in 1910, after he attained his majority, but the validity of that transaction is not questioned. He was not a full-blood Indian, but a half-blood.

January 15, 1912, the interest of Amos and Elizabeth, who were minors, was sold and conveyed by their guardian under the direction and approving order of the county court wherein the guardianship of their persons and property was pending.

At the time of Freeland's death the family was residing in that part of the Indian Territory which on the advent of statehood (November 16, 1907) became Wagoner County, and shortly after his death they removed to and ever since have resided in what became Okmulgee County. The lands are in the latter county and it was in the county court thereof that the guardian's sale and conveyance were directed and approved.

The conveyance by the mother, who was a full-blood Indian, and that by the guardian of Amos and Elizabeth, who were full-bloods, are the ones to be considered on this appeal. All rights under them are held by parties who were defendants in the District Court and are appellees here.

The grounds on which the conveyances are assailed are four in number,—one directed at both conveyances, one at that of the mother alone and two solely at that of the guardian. They will be taken up in this order.

1. It is urged that the heirs took the lands as allottees and not as heirs of Freeland,—in other words, that they received the lands as a direct allotment to them and not as an inheritance,—and therefore that such of them as were full-blood Indians were restrained and disabled from disposing of the lands by reason of the restrictions applicable to living allottees of the full-blood. If the premise were right, the conclusion would be unavoidable. See § 19, Act of 1906, *supra*, and § 1, Act of 1908, *supra*. But the premise is not right, as is shown by statutes already mentioned, such as § 28 of the Act of 1901, § 7 of the Act of 1902 and § 5 of the Act of 1906. The allotment was made in virtue of the right of Freeland, who was one of those among whom the tribal property was to be distributed. Under the statutes that right was not extinguished by his death but was preserved for his heirs; and it was preserved for them because they were his heirs, and not because their relation to it was otherwise different from that of other members of the tribe. Such individual claims as they had to the tribal lands were to be satisfied by their individual allotments. What they were to receive in the right of Freeland was the lands and moneys to which "he would be entitled if living"; and these were to "descend" to and vest in them as "his heirs," as if he had received the same "during his life." Putting aside the distinctions between title by purchase and title by descent

which prevail in the absence of controlling statutes, and giving effect to the letter and spirit of what Congress has enacted, we think it is manifest that these heirs must be regarded as having received these lands as an inheritance from Freeland, and not as a direct allotment to them. *Perryman* v. *Woodward*, 238 U. S. 148, 150; *Talley* v. *Burgess*, *supra*.

2. The first restrictions applicable to Creek lands such as these were embodied in § 22 of the Act of 1906, hereinbefore set forth. As respects the mother's conveyance, which was executed January 15, 1908, all that was necessary under that section to make the conveyance effective—the mother being an adult full-blood Indian—was that it be approved by the Secretary of the Interior. As before shown, it was approved by that officer July 6, 1910. But it is urged that before his approval was given all power to approve had been taken from him and lodged elsewhere by the Act of May 27, 1908. Evidently the Secretary did not so construe that act when his approval was given, else he would have withheld it. Not only so, but his action in this instance was in accord with the practice of his office for a considerable period and also with an opinion rendered to him by the Attorney General. 27 Ops. A. G. 530. This administrative view is, of course, entitled to respect, and those who have relied thereon ought not lightly to be put in peril. But it is not controlling. We have examined the act, including § 9, upon which reliance is had, and are of opinion that as to conveyances made prior to the act the power of the Secretary to examine and approve or disapprove under § 22 of the prior enactment was not taken away. The act contains no express revocation of that power, nor any provision inconsistent with its continued exercise as to prior conveyances. The provision in § 9, that no conveyance of any interest of any full-blood Indian heir shall be valid "unless approved by the court having jurisdiction of the settlement of the

estate" of the deceased allottee, taken according to its natural import, prescribes a rule for future rather than prior conveyances; and no reason is perceived for rejecting its natural import. Had there been a purpose to cut off action by the Secretary as to conveyances already made, some of which were before him at the time, it is but reasonable to believe that other words aptly expressing that purpose would have been used. The matter hardly would have been left to conjecture or uncertain implication. Besides, the absence of such a purpose is measurably reflected by the declaration in § 1 that "the Secretary of the Interior shall not be prohibited by this Act from continuing to remove restrictions as heretofore." The lapse of two and one-half years between the execution of the conveyance and its approval is not material, there being no lawful intervening disposal. *Pickering* v. *Lomax*, 145 U. S. 310; *Lykins* v. *McGrath*, 184 U. S. 169.

3. Section 6 of the Act of 1908 subjects the persons and property of minor allottees to the jurisdiction of the probate courts of the State, and in a proviso says, "no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of the court or otherwise." One ground on which the guardian's sale on behalf of the minor heirs, Amos and Elizabeth, is assailed is that it was in violation of this proviso. But in our opinion the proviso does not include or affect inherited lands. It refers, as a survey of the act shows, to lands of living minor allottees and not to lands inherited from deceased allottees. Section 9 expressly recognizes that the latter may be sold, and this proviso cannot be taken as prescribing the contrary. The word "living" evidently is intended to mark the distinction. What is intended is to make sure that minor allottees receive the benefit of the restrictions prescribed in § 1, and not to impose others. Apparently it was apprehended that the general language of § 6 might be taken as enabling probate

courts and guardians to sell without regard to those restrictions, and the office of the proviso is to prevent this. So understood, it is in accord with the general scheme of the act and not in conflict with any other provision.

4. The remaining objection to the guardian's conveyance is that it was not approved by the court having jurisdiction of the settlement of the estate of Freeland, the deceased allottee.

The situation out of which the objection arises is at least novel. Freeland died June 22, 1905, and the conveyance was made January 15, 1912. Statehood had intervened and counties had been organized where there were none before. He resided and died in what afterwards became Wagoner County, and under the local law the county court of that county is the one which at the time of the conveyance would have had jurisdiction of the settlement of his estate. The court in the Indian Territory which would have had such jurisdiction prior to statehood was no longer in existence. The conveyance was not approved by the county court of Wagoner County, but was approved by the county court of Okmulgee County, which under the local law was the only court having jurisdiction of the guardianship of the persons and property of the minors, Amos and Elizabeth. The lands were in that county and the minors, as also the other heirs, were residing there.

Section 6 of the Act of 1908 and other congressional enactments explicitly subject the persons and property of Indian minors of the Five Civilized Tribes to the jurisdiction of the probate courts of Oklahoma. In that State the county courts are the probate courts.

Section 9 of the same act declares:

"That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in

such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee."

If in this instance the same court had had jurisdiction of the guardianship of the minor heirs and of the settlement of the estate of the deceased allottee, no embarrassment would have ensued; but as that was not the case, the question arises, whether it was essential that the guardian's conveyance, directed and approved, as it was, by the court having control of the guardianship, should also be approved by the court having jurisdiction of the settlement of the deceased allottee's estate? The Circuit Court of Appeals answered in the negative; and, while the question is not free from difficulty, we think that solution of it is right.

Of course, the purpose in requiring any approval is to safeguard the interests of the full-blood Indian heir. Where he is a minor he can convey only through a guardian, and no court is in a better situation to appreciate and safeguard his interests than the one wherein the guardianship is pending. Besides, as a general rule, a guardianship carries with it exclusive power to direct the guardian and to supervise the management and disposal of the ward's property. It is so in Oklahoma. This rule is so widely recognized and so well grounded in reason that a purpose to depart from it ought not to be assumed unless manifested by some very clear or explicit provision. The Act of 1908 contains no manifestation of such a purpose outside the proviso in § 9. That proviso seems broad, but so is the provision in § 6 subjecting the persons and property of minor Indians to local guardianship. As both are in the same act, they evidently were intended to operate harmoniously and should be construed accordingly. The proviso does not mention minors under guardianship; and to regard its general words as including them will either take all supervision of the sale of their interest in

inherited lands from the court in which the guardianship is pending, or subject that court's action to the approval of another court of the same rank. In either event conflict and confusion will almost certainly ensue and be detrimental to the minor heirs. But, if the proviso be regarded, as well it may, as referring to heirs not under guardianship—in other words, to adult heirs—the two provisions will operate in entire harmony and all full-blood heirs will receive the measure of protection intended. We think this is the true construction.

Decree affirmed.